

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
THE CITY OF HUNTINGTON,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01362
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

	x	
	:	
CABELL COUNTY COMMISSION,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01665
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

BENCH TRIAL - VOLUME 20
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

MAY 28, 2021

APPEARANCES:

**For the Plaintiff,
Cabell County Commission:**

MR. PAUL T. FARRELL, JR.
Farrell & Fuller, LLC
1311 Ponc De Leon, Suite 202
San Juan, PR 00907

MR. ANTHONY J. MAJESTRO
Powell & Majestro
Suite P-1200
405 Capitol Street
Charleston, WV 25301

MR. DAVID I. ACKERMAN
Motley Rice
Suite 1001
401 9th Street NW
Washington, DC

MR. PETER J. MOUGEY
Levin Papantonio Thomas Mitchell Rafferty & Proctor
Suite 600
316 South Baylen Street
Pensacola, FL 32502

MR. MICHAEL J. FULLER, JR.
Farrell & Fuller
Suite 202
1311 Ponce De Leon
San Juan, PR 00907

APPEARANCES (Continued):

**For the Plaintiff,
Cabell County Commission:**

MS. MILDRED CONROY

The Lanier Law Firm
Tower 56
126 East 56th Street, 6th Floor
New York, NY 1022

MS. PEARL A. ROBERTSON

Irpino Avin Hawkins Law Firm
2216 Magazine Street
New Orleans, LA 70130

MR. MICHAEL W. WOELFEL

Woelfel & Woelfel
801 Eighth Street
Huntington, WV 25701

MR. CHARLES R. WEBB

The Webb Law Center
716 Lee Street East
Charleston, WV 25301

MS. ANNIE KOUBA

Motley Rice
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

MR. MARK P. PIFKO

Baron & Budd
Suite 1600
15910 Ventura Boulevard
Encino, CA 91436

**For the Plaintiff,
City of Huntington:**

MS. ANNE MCGINNESS KEARSE

Motley Rice
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

MS. LINDA J. SINGER

Motley Rice
Suite 1001
401 Ninth Street NW
Washington, DC 20004

MS. TEMITOPE LEYIMU

Motley Rice
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

**For the Defendant,
Cardinal Health:**

MS. ENU MAINIGI

MS. JENNIFER WICHT

Williams Connolly
725 Twelfth Street NW
Washington, DC 20005

MS. SUZANNE SALGADO

725 Twelfth Street NW
Washington, DC 20005

MR. STEVEN R. RUBY

Carey Douglas Kessler & Ruby
901 Chase Tower
707 Virginia Street, East
Charleston, WV 25301

APPEARANCES (Continued):

**For the Defendant,
Cardinal Health:**

MS. ASHLEY W. HARDIN
MS. ISIA JASIEWICZ
Williams & Connolly
25 Twelfth Street, NW
Washington, DC 20005

APPEARANCES (Continued):

**For the Defendant,
McKesson:**

MR. TIMOTHY C. HESTER
MR. PAUL W. SCHMIDT
MS. LAURA M. FLAHIVE WU
MR. ANDREW STANNER
Covington & Burling
One City Center
850 Tenth Street NW
Washington, DC 20001

MR. JEFFREY M. WAKEFIELD
Flaherty Sensabaugh & Bonasso
P.O. Box 3843
Charleston, WV 25338-3843

APPEARANCES (Continued):

**For the Defendant,
AmerisourceBergen Drug Corporation:**

MS. SHANNON E. MCCLURE

MR. JOSEPH J. MAHADY

Reed Smith
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103

MS. GRETCHEN M. CALLAS

Jackson Kelly
P.O. Box 553
Charleston, WV 25322

APPEARANCES (Continued):

MR. ROBERT A. NICHOLAS

Reed Smith
Suite 3100
Three Logan Square
1717 Arch Street
Philadelphia, PA 19103

MS. ELIZABETH CAMPBELL

1300 Morris Drive
Chesterbrook, PA 19087

Court Reporter: Ayme Cochran, RMR, CRR
Court Reporter: Lisa A. Cook, RPR-RMR-CRR-FCRR

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1 PROCEEDINGS had before The Honorable David A. Faber,
2 Senior Status Judge, United States District Court, Southern
3 District of West Virginia, in Charleston, West Virginia, on
4 May 28, 2021, at 9:00 a.m., as follows:

5 THE COURT: Mr. Farrell, you have a matter you
6 want to take up with the Court?

7 MR. FARRELL: Your Honor. As you know, ECF 1301
8 is the order that was entered regarding public access and
9 media contact. The plaintiffs are receiving requests
10 pursuant to Paragraph 8 to make reproductions and disclose
11 documents that are admitted in the record and we just would
12 seek further guidance from the Court on our obligations,
13 whether that is a may or shall, or what our obligations are.

14 THE COURT: Okay.

15 MR. SCHMIDT: On the McKesson side, Your Honor, we
16 appreciate Mr. Farrell raising this in the manner he did.
17 We're troubled to be in this position given what's happened
18 before in the course of this trial. We're dealing with
19 something here that was an inappropriate e-mail, but it's
20 not relevant to any issue in this case and it wasn't
21 relevant, candidly, to the two witnesses who testified in
22 this case. One did not receive it --

23 COURT REPORTER: I'm having trouble hearing. Is
24 your microphone on?

25 MR. SCHMIDT: Let me try to speak closely.

1 COURT REPORTER: Thank you.

2 MR. SCHMIDT: Yeah. It's just not relevant to
3 them. Neither of them wrote it. One of them didn't even
4 see it. And that leads us to be concerned about unfair harm
5 to the people who live and work in this community and had
6 nothing to do with the e-mail.

7 All that being said, we're in a tough position where we
8 are -- where we are now. So, we don't take a position on
9 the request that Mr. Farrell has made other than that
10 expression of concern about something like this being an
11 issue that, in our view, shouldn't be because of its clear
12 lack of relevance.

13 THE COURT: Well, I'm concerned about the tendency
14 of -- well, I don't want to be unduly critical of the press,
15 but there is a tendency to seize on things like this and
16 create publicity that makes these things appear more
17 significant than, in my view, they really are, but I think I
18 have to disclose this. I don't think I have a choice.

19 The Fourth Circuit in *Doe v. Public Citizens*, 749 F.3d
20 246, at Page 269, a 2014 Fourth Circuit case, pointed out
21 that there's certain confidential information that -- such
22 as proprietary and trade secret information which may
23 justify a partial a sealing of court records.

24 The court went on to say, we are unaware, however, of
25 any case in which this court has found a company's bare

1 allegation of reputational harm to be a compelling interest
2 sufficient to defeat the public's First Amendment right of
3 access.

4 And the Court went on and said every case we've located
5 has reached the opposite result under the less demanding
6 common law standard.

7 So, I think I have to disclose this and -- and I think
8 that rule would apply here even though we're talking about
9 embarrassment as to employees of the corporation, not
10 completely to the corporation itself but, certainly, there
11 is some embarrassment.

12 I think I've got to disclose this and I think the
13 public has a right to it and, relying on this case, that's
14 the ruling of the Court.

15 MR. FARRELL: Judge, may I? Can we ask for a
16 modification of 1301 and allow the party presenting the
17 evidence to reproduce or make available at the end of the
18 week instead of on a daily basis?

19 THE COURT: Why would you want to do that?

20 MR. FARRELL: Well, because my staff is pretty
21 busy and we're -- we are preparing for our case in chief.
22 And so, to coordinate what's been admitted, what's been
23 conditionally admitted, what's been demonstrative, is
24 something that I am personally going to oversee and I'm just
25 trying to get a little bit of guidance on whether or not I

1 need to be doing this on a daily basis or a weekly basis.

2 THE COURT: Make it available to who? What are
3 you --

4 MR. FARRELL: So, the Paragraph 8 says that -- of
5 1301 says that the party presenting the evidence is
6 responsible for providing copies to media. And so, what
7 that means is somebody needs to screen what has been
8 admitted, what has been conditionally admitted, what's not
9 been admitted, and what's been used as a demonstrative and
10 then provide copies.

11 And so, I'm going to personally oversee that and
12 pursuant to the order what I'd like to do is I'd like to be
13 able to wait until the end of the week to be able to compile
14 the exhibits that have been introduced by the plaintiffs
15 during that week for the media rather than having to do it
16 and spend an hour a day going through the record waiting for
17 the transcript to confirm it.

18 THE COURT: Well, let me hear from the defendants
19 about this.

20 MS. MAINIGI: Your Honor, just as a general
21 matter, that's fine with us.

22 THE COURT: Mr. Schmidt?

23 MR. SCHMIDT: We don't take a position on that,
24 Your Honor.

25 THE COURT: All right. Mr. Nicholas?

1 MR. NICHOLAS: No position.

2 THE COURT: Well, if it will help you out, Mr.
3 Farrell, that's what we'll do.

4 MR. SCHMIDT: I guess I would just reinforce I
5 don't think Mr. Farrell's proposing this and, as I said, I
6 appreciate the way he raised this specific issue. I don't
7 think this should be tacit just providing stories to the
8 media in a selective manner, but --

9 THE COURT: Well, I agree with that. I -- well,
10 I've voiced my concern earlier about -- about what can
11 happen with information like this and there just isn't
12 anything I can do about it. The public has a right to it
13 and we have to disclose it.

14 MR. FARRELL: Thank you.

15 THE COURT: And the 1301 is modified so that you
16 -- you have to make the disclosures at the end of the week.
17 That will take some of the heat off of you during the week
18 and make a whole lot -- make it a whole lot worse on Friday.

19 MR. FARRELL: Thank you, Judge.

20 THE COURT: Okay. Okay. We're having a technical
21 problem here. We will just take a couple of minutes and get
22 that fixed.

23 (Pause)

24 THE COURT: Is Dr. O'Connell in the courtroom?

25 MS. QUEZON: Yes, Your Honor, she is.

1 THE COURT: Do you want to come on up and resume
2 the witness stand, Dr. O'Connell?

3 And it's my duty to remind you you're still under oath,
4 which I'm sure you knew before I told you.

5 THE WITNESS: Yes, sir.

6 Good morning.

7 THE COURT: Okay. We're ready to go.

8 BY MS. QUEZON:

9 Q. Good morning Dr. O'Connell.

10 A. Good morning.

11 Q. I wanted to circle back to a term that we used a few
12 times yesterday and just make sure that it's clear for the
13 record what you were -- what you were talking about.

14 On a number of occasions in some different -- some of
15 the different programs that you were discussing with the
16 Court you used the term recovery coach or recovery peer.
17 Can you explain in a little bit more detail what a recovery
18 coach or recovery peer is?

19 A. Yes. A certified peer recovery coach is an individual
20 in long-term recovery and the State of West Virginia
21 classifies that as having two years of recovery time so that
22 they can establish and prove that.

23 They also take over 40 hours of courses on substance
24 use and motivational interviewing and other skills so that
25 they can use and harness their lived experience to work with

1 another individual who is not yet in recovery so they use
2 their time from having a Substance Use Disorder to engage
3 with other folks and bring them into the recovery process.
4 So, they would not have a mental health certification and be
5 a social worker or psychologist, but they can use their own
6 experience to then say I was in that same situation. I
7 found recovery and I can show you that we can go to a
8 meeting together or show you how to do this with me.

9 **Q.** Thanks. All right. I think where we were in the slide
10 deck -- and did you bring yours with you, as well?

11 **A.** I did.

12 **Q.** Perfect. Was at the City of Solutions, can you explain
13 to the Court how the City of -- what the City of Solutions
14 is and how it came to be?

15 **A.** Absolutely. As we were doing some of our presentations
16 around town and around the around the State of West
17 Virginia, we had been re-branded, right? We had stopped
18 talking about the epicenter of the epidemic and we'd started
19 saying we were the epicenter of solution. And we started
20 terming that the City of Solutions. And we heard that from
21 our mayor, and our medical school, and our university. And
22 our community started talking more about solutions.

23 And so, we really took to heart this idea and we were
24 asked by a funder of the McDonough Foundation up in the
25 northern panhandle if we would be willing to compile all of

1 the work that we were saying out in the community into a
2 singular location and that he was willing to pay for
3 someone's time to do this work, to bring all of that
4 together. And he wanted this because he believed that the
5 work we were doing in our region could be replicated in
6 other parts of the state. So, he asked us to compile this
7 and we did so and called it the City of Solutions.

8 He then wanted it expanded upon and not only in a book
9 format, but presentations. And so, we did 14 presentations
10 around the State of West Virginia to touch all 55 counties
11 and we followed that up with TA, it's technical assistance,
12 for counties that said we see that you have a Quick Response
13 Team. How would we do that? So, we offered the opportunity
14 to receive support through us on grant writing or pursuing
15 grants to explore that opportunity.

16 **Q.** And, Dr. O'Connell, the information that we've gone
17 through with the Court already yesterday afternoon and the
18 programs and the different things that we -- we talked
19 about, is -- are those programs described in the City of
20 Solutions?

21 **A.** Yes. In much greater detail. Most of what you've --
22 or some of what you've seen thus far is pulled almost
23 directly or a pared down version from the book *The City of*
24 *Solutions* and it also then includes contact information from
25 each of the individuals who run those programs. It includes

1 budgets for those programs. And just much greater detail.
2 But the PowerPoint from yesterday is some of the slides from
3 what is really a four-hour presentation as part of the City
4 of Solutions.

5 **Q.** And does the City of Solutions look at the present or
6 does it look forward?

7 **A.** It looks at the historical perspective of our community
8 up into the present. And as we sort of subtitled it, a
9 Guide to What Works and What Doesn't, it was also
10 acknowledging there were things that may not have been as
11 successful or were a challenge to implement. So, we looked
12 historically at programs that we started and continued and
13 also things that were necessary to move us forward but then
14 maybe not necessary to continue or weren't able to be
15 continued in some cases. So, the -- it was really
16 historical up to the present day with some recommendations
17 for moving forward, but that was a shorter element.

18 **Q.** And was there a time, Dr. O'Connell, that the lawyers
19 representing both the County and the City met with community
20 leaders regarding the City of Solutions and what was
21 happening within the community?

22 **A.** There was. When the City of Solutions was developed,
23 it was developed long before I, for one, knew anything about
24 this matter and that there would be any future events
25 involving litigation. This was purely done with a

1 retrospective look at our community and at the request of
2 another community to help them move forward. At one point,
3 in approximately two years ago, there was a -- or three
4 years ago, I apologize for the COVID year.

5 **Q.** COVID year, we don't count that one.

6 **A.** Approximately three years ago, there was a meeting of
7 individuals of the City of all leaders across the community
8 who did meet together and, at that meeting, Paul Farrell was
9 in attendance.

10 **Q.** And was there a request that, as opposed to just
11 looking at the present and the historical and present what
12 was happening, that the community leaders begin looking what
13 do we need in the future?

14 **A.** At that time, it was a discussion around sort of where
15 the community was going and what it would take to move the
16 community out of the current situation. And my boss, Dr.
17 Steve Petrany, had invited me to that meeting and as the
18 discussion came up about does the community have a next
19 step, do we have a strategic plan for moving forward, I said
20 to him we're already doing that. We're already working on
21 that because, as we had finished the City of Solutions,
22 there was this brief discussion about where we were and we
23 needed much more information about where to go next.

24 And so, our division had discussed an in-depth
25 strategic planning session. We believed it was time that we

1 stop what I sort of would call the tail wagging the dog.
2 When a grant application would come out, we would say what
3 do we need to do to fit that application versus saying is
4 that grant application the right fit for our community
5 because we -- that's how we'd been for so long. And we
6 wanted to be more strategic and selective in our time and
7 resources as we moved forward.

8 And so, at that time, we -- we realized that it would
9 be necessary to have a strategic plan moving forward and I
10 saw that conversation as the opportunity to do so and that
11 our division could lead that.

12 **Q.** And so, did you volunteer?

13 **A.** I did.

14 **Q.** How did Dr. Petrany feel about that? No, I'm teasing.

15 **A.** I still have my job.

16 **Q.** Yes. And can you tell the Court what you did, what
17 measures you undertook, in order to make determinations
18 about the future needs of the community?

19 **A.** At that time, we went back to our offices and said that
20 this would really be a detailed examination and we would
21 want to do it in a way that invoked all of our community
22 members. I really like to use the royal "we" when we talk
23 about Huntington because there's no one person or entity
24 that's doing much of the work you heard about yesterday or
25 today but, rather, we are working collaboratively together

1 to move the community forward.

2 So, we pulled together focus groups and that meant
3 myself and one of our employees and another researcher on
4 our team pulled together what we call focus groups. So, in
5 the world of qualitative research versus quantitative,
6 quantitative being numbers and surveys, we wanted to pull
7 together qualitative work which meant focus groups that we
8 brought the different parts of the continuum that we talked
9 about yesterday.

10 So, early intervention, community outreach, the
11 outpatient treatment, residential, but also target
12 populations like law enforcement and first responders, the
13 faith community, the unstably housed or the homeless
14 populations. And so, throughout all of those, we pulled
15 together experts from the community and those with lived
16 experience in each of those areas to have a meeting.

17 And in that meeting we asked them what are your
18 short-term needs and what are your long-term needs. And
19 this was hard because so many folks were used to just
20 responding to putting out the fire, sort of living on the
21 day-to-day crisis.

22 And so, we -- the opportunity to get creative and think
23 what it was going to take in the long-term to move us
24 forward to not only be reactive, but in a healthy way
25 responsive was what those meetings were done to do.

1 And, so out of that, we pulled what became the
2 Resiliency Plan and we called it that because we believe the
3 community is resilient. We believe it is flexible, and
4 valuable, and it's able to change with whatever happens
5 because the day that you write something about Huntington,
6 it could change the very next moment. A new grant could
7 come in or a new issue could be presented that we didn't
8 think of or see.

9 And so, we need to be able to be learning on the ground
10 and it also means that we need to be out of our,
11 quote-unquote, ivory tower of the university and working
12 with people who are on the ground every day living with
13 Substance Use Disorder or working directly with those with a
14 Substance Use Disorder.

15 **Q.** And, Dr. O'Connell, were there multiple drafts of this
16 before it took its ultimate form?

17 **A.** I don't even want to count how many. As we went
18 through it, there were multiple drafts a day in many cases.
19 There were -- there was a day I think there were probably
20 three or four drafts an hour as we moved between three
21 people writing and looking at it and then sending it to --
22 we also used a panel of experts and leaders in the community
23 as an advisory board.

24 So, we would bring it to them. They would give
25 feedback. Then we'd have to incorporate that feedback.

1 Then it would go back out.

2 In some cases then a grant might change and so we would
3 change an example or a forward-looking plan, but it was
4 something that down to the moment that we chose to release
5 it publicly, it changed.

6 **Q.** And was there any attempt to put a price tag on what it
7 was going to cost to do what needed to be done in the
8 community?

9 **A.** There was. I, at one point, sort of took -- and I
10 remember taking Project Hope as an example. So, I said
11 Project Hope, we were given \$1.4 million renovations of a
12 building that was previously owned by the Huntington City
13 Mission. And they were going to be not able to use that
14 building anymore.

15 And we now lease that building from them, but we gutted
16 it and completely re-did it to become what Project Hope is
17 today. And -- and that took \$1.4 million, I believe, and
18 then we received \$2.1 in SAMHSA money, that grant from the
19 Substance Abuse and Mental Health Administration.

20 When we had both of those, I kind of looked at that and
21 said, well, that housed 17 families and, if we times that
22 by, I don't know, five years, that would sort of extrapolate
23 to this much money. And then I said, well, five years isn't
24 going to do any -- much on this sort of epidemic. What
25 about 10, 15, 20?

1 And I, at one point said, well, this really needs to be
2 like a three-generation plan because we already have these
3 infants affected. We won't know what their needs are for
4 quite sometime. So, we need to have that built into the
5 idea that there's long-term child development growing in
6 Project Hope, for example. And all of that sort of would
7 come out to something different.

8 And then, at one point, I recognized I had no idea what
9 I was doing. I am not a health economist. I am not in any
10 way trained in that area. And my expertise did not fall
11 there because my only experience had been SAMHSA says you
12 can write a grant for \$2 million. You don't submit a grant
13 to SAMHSA for \$5 million. You do whatever it takes to
14 submit a grant for \$1,999,999.95. Give them the extra \$0.05
15 back, right?

16 So, we would always write to that amount. If it's a
17 \$50,000.00 grant, we're going to write to \$50,000.00. So, I
18 have no idea what something actually costs to turn around
19 and say this is what's needed. I know this is what I'm
20 offered, this is what I can write to, and work to make some
21 good happen with that small amount of money.

22 And so, as we went through these types of things, I
23 very quickly recognized I had no expertise; whereas, the
24 rest of the plan had been community driven from experts.
25 This was an area we had no expertise both in the folks who

1 were writing it or in our local community.

2 And so, that was not the goal of our plan. It had not
3 been the goal of our prior efforts with the City of
4 Solutions and it was something that was going to dilute the
5 effort of the community. And so, it was removed from any
6 and all drafts.

7 **Q.** So, ultimately, are there any costs put forth in the
8 resiliency plan?

9 **A.** Not by us.

10 **Q.** Okay. Now, in the resiliency plan were there certain
11 areas of focus that the community determined through the
12 focus groups and through your discussions with the
13 community? Were there particular areas of focus that --
14 that kind of came into focus?

15 **A.** Yes. So, as we looked at it, we'd obviously started
16 with that same continuum of care, right? We want to -- we
17 are nothing but consistent.

18 So, as we started yesterday, I said we looked at the
19 continuum of care looking backwards. As we moved forward,
20 we wanted to use that same thing. It's -- it's a national
21 standard. Let's focus on that. So we wanted to make sure
22 we had greater areas in all of this.

23 So, if I take just quickly, for example, prevention,
24 the top blue circle, prevention is often overlooked because
25 how do you prove prevention works, right?

1 How do I prove to you that I didn't smart smoking
2 because I went to a class that told me not to smoke, right?
3 It's much easier to prove that you were smoking and I
4 stopped you smoking and, therefore, I saved money because
5 the future cost of you smoking can be based on your past
6 cost of smoking.

7 But if you never started smoking, how do I indicate
8 it's because we did this intervention, or you had this
9 class, or you saw that crazy photo of lungs on a cigarette
10 packet? It's hard to do. And so, prevention is a huge
11 challenge, but it's also, in many cases, how we -- we
12 struggle because people don't have the healthy foundation.

13 And so, we're not getting upstream enough to stop folks
14 from entering the stream when we're right now trying to pull
15 them out as they're about to go off the waterfall or off the
16 cliff.

17 So, as the community sort of looked we focused more
18 in-depth on some of these areas and heard from folks in
19 these areas. So, when I think of prevention I think of the
20 work that PEP, Prevention Empowerment Partnership, has done
21 and how that's been small but is definitely an area for
22 growing.

23 And then, as we sort of looked around that circle, it's
24 the continuum again. It just goes early intervention,
25 outpatient services, inpatient and residential. Then sort

1 of healthy communities.

2 But we started to expand it out also to economic
3 development because, as I mentioned yesterday, one of our
4 projects is CORE, Creating Opportunities for Recovery
5 Employment, and CORE is needed because we can get people
6 into recovery, but if we can't get them back to work, why
7 are they going to stay in recovery? If they can't make
8 money, they're going to go find a way to make money in a way
9 that they did in the past. And so, they need a reliable
10 sustainable job.

11 That's also part of a healthy community. So, we wanted
12 to focus more on economic development and that meant that we
13 needed to have the educational and vocational training to
14 support that and that we needed to also have our responders,
15 our helpers being helped at the small scale they are being
16 currently, but also sort of capping all of this that
17 continued to come into focus, is we've done all of this
18 rapidly.

19 And people often ask, you know, where's -- where's the
20 publications? Where's all your research behind it? And I
21 often say we've been running around with our hair on fire.
22 I don't have time. My priority is saving a life right now.
23 It's not getting out my name on a publication.

24 And that's important. And as a -- you know, a doctoral
25 student of a large research university like Virginia Tech,

1 that is the priority in most cases, but that's not been
2 ours. And so we want to, though, make sure we're
3 prioritizing that because we know what we're doing works.
4 It's being shown through the evaluation of our grants, but
5 as we move forward, we want to make sure that we're
6 automatically moving hand-in-hand with this is working or,
7 if it's not, being able to pivot.

8 **Q.** And were there some short-term approaches that -- that
9 the group concluded would be in the best interest of the
10 community?

11 **A.** There were. It was, again, a challenge to summarize
12 this down, but our goal was to make this a brief document.
13 *The City of Solutions* book is thick. I don't know how many
14 pages it ended up being, but it would sit, you know, about
15 that wide (indicating).

16 Whereas this, the Resiliency Plan, our goal, I think,
17 was 20 pages and sometimes writing 20 pages is harder than a
18 hundred. And so, we really tried to condense down what the
19 community had said from each of those meetings. So, if they
20 said short-term goals and long-term goals.

21 And so, just a few of those would be that we know that
22 we want to know a lot more about what the children are
23 experiencing. So, if the children -- a child is exposed to
24 neo -- or is born with exposure and born with Neonatal
25 Abstinence Syndrome, we want to know what does that look

1 like at six months, at a year, at a year and one month? You
2 know, what types of early interventions are needed and
3 what's working?

4 And then what types of interventions are needed when
5 they get to school? Because, in most cases, we can't just
6 forget about it when they show up in kindergarten. And
7 there's, you know, very little research out there, but there
8 is, you know, a study out of Australia that shows that there
9 are deficits at different times of school populations when
10 in comparison.

11 So, we want to make sure that we have remember search
12 that's growing with kids and that's a challenge to do. And
13 so, we want to -- we want to make sure we get that set up.

14 We want to make sure that the education we're providing
15 -- you know, prevention education in the United States often
16 still sits around the topic of maybe don't do drugs or
17 putting out the bashed up car the night before prom to tell
18 kids not to drink and drive.

19 We need to do a lot more than that when it comes to
20 using medications and -- and taking illicit drugs of any
21 kind. And so, expanding that type of education and finding
22 out what works and what doesn't.

23 And so, we also looked at harm reduction and how we
24 could expand and sustain those. And so, in some cases, it's
25 not saying we need a different service maybe today, but we

1 need to sustain what we have now and be ready to grow to
2 what we have a need for in the future.

3 **Q.** So, through both the road to recovery that you
4 discussed with the judge yesterday, and then through the
5 City of Solutions, and then finally to the Resiliency Plan,
6 does the community have the foundation and the
7 infrastructure to do what it needs to do?

8 **A.** Yes. We have -- I think one of the -- the most proud
9 sort of feelings in Huntington is that the groundwork is
10 there, that we -- I think we can say it does feel to me like
11 we're standing on a solid foundation right now, that we have
12 the community partners, that we're uniquely situated because
13 we, as a community, chose not to bury our heads in the sand
14 and not acknowledge our problems, but rather said we are
15 living in an epidemic. We are losing people every day. How
16 can we unite to get out of this? And so, most, if not all
17 groups have set egos aside and collaborate on small amounts
18 of money and grant applications to ensure that we're
19 successful to show, you know, that we can go up against the
20 big dogs and big cities.

21 I remember the first time we applied for the Project
22 Hope grant, we didn't receive it. It went to like Dallas,
23 Austin, Boston, New York, Los Angeles. And we just looked
24 at that and said, well, no wonder. I mean, we can't
25 compete. Most people probably couldn't find Huntington on

1 the map. And that's not fair because our numbers were far
2 worse per capita.

3 And so, that took some legislative efforts and -- and a
4 re-configuring for the way that we were demonstrating our
5 worth but, you know, the second time, we did receive that
6 grant.

7 So, that goes to show both that our community is doing
8 what it takes to have that foundation, but also, even in
9 that case, that the federal government recognized early on
10 that we were already starting to build those collaborative
11 pathways to be able to implement a really big lift.

12 **Q.** So, with the foundation, infrastructure and the plan
13 moving forward, can you tell the Court what's needed?

14 **A.** Well, do you have the rest of a day? I know you get
15 out early on Friday.

16 THE COURT: Only until noon.

17 THE WITNESS: Only until noon? Okay. Well, I'll
18 make this quick then. No, we -- there's a lot that sort of
19 -- needs as we move forward and we want to be flexible
20 because as we -- one of the big things we outlined was a
21 transportation plan, for example. If you live ten miles
22 outside the City of Huntington, it's going to be really hard
23 to get into the City of Huntington some days.

24 If you need to be at treatment -- okay. So, if I, you
25 know, needed to be at my medication-assisted treatment

1 appointment today and I had to be -- let's say court was in
2 Huntington but I needed to be at treatment but I also had to
3 figure out child care, and to be here on time, and to make
4 sure I made that appointment. It would be impossible. I
5 wouldn't be able to do it, especially if I didn't have a car.
6 So, transportation becomes this large barrier to getting
7 people into care.

8 Also, 9 to 5 outpatient treatment is a barrier because,
9 like I said, today I wouldn't have been able to make that,
10 to make my medication appointment, to keep me in long-term
11 recovery. So, we wanted -- we recognized that we need
12 expansive levels of care.

13 So, things that are going really 24/7; that if you at
14 2:00 a.m. recognize you need help, it needs to be there. Or
15 if you get out of work at 5:00, you need to be able to see
16 someone at 7:00 p.m. And so that just takes a lot more
17 manpower to sustain and a lot more opportunities.

18 It also means that we can set up -- or we would like
19 the idea of hubs and spokes. If it's working at PROACT, for
20 example, could work out of a mobile clinic ten miles outside
21 of town so you don't need to drive out into town, we can
22 meet you where you're at, then that needs to happen.
23 So, if we look at transportation sort of as a link.

24 But even when I take that simple example, when we wrote
25 this, we got a small transportation grant to start using

1 Uber, as an example, or Lyft, as an opportunity that people
2 could call Lyft and that we would cover that if they showed
3 up for a medical -- a substance use treatment appointment.

4 The State of West Virginia has implemented an expanded
5 TTA, transportation hours of the bus. They'll come out and
6 get you if you live in a rural community to bring you to
7 substance use. Those are both very small pilot programs,
8 but they give us hope for future things.

9 So, I say that to sort of highlight even one of the
10 things we wrote 18 months ago, two years ago, a year ago, is
11 -- is -- would be updated today to say, hey, here was
12 something that worked that we didn't think about at the time
13 that could work moving forward. So, transportation would be
14 sort of one example of how it's connected.

15 Expanding resources across the community out into the
16 rural areas around our area. Expanding prevention and early
17 intervention efforts. The goal of sustaining harm reduction
18 and harm reduction efforts, not just potentially in a
19 singular location, but that they're meeting people again
20 where they're at.

21 We've set up something like Project Hope that meets a
22 small portion of the pregnant and parenting need, but we
23 don't have anything in that example that would treat
24 parenting fathers. So, that's automatically a gap that we
25 acknowledged when we started treating parenting women.

1 When we look at the workforce population with even
2 CORE, we're every day recognizing there's more and greater
3 need for training, education and resources to get people
4 workforce ready and to help them overcome legal fines or
5 custodial fines and get their ID.

6 If we just walk through the experience of someone
7 trying to get out of incarceration, we know that we need
8 greater efforts around re-entry services and the linking
9 between incarceration and successful connection.

10 And in most of these cases, we know that it works if
11 someone is there supporting you, whether that's a peer or a
12 family navigator, we know that if someone comes alongside
13 and says I can help you do this, they're -- they're much
14 more likely to be successful. And so, we need that systemic
15 network to work around the individual, the family, and even
16 the community system.

17 And so, as we sort of looked through those long-term
18 approaches, that's sort of the recurring theme, that as we
19 look at early intervention, we want a system built around
20 that. If we look at high school and college age youth and
21 their intervention, we want a healthy system built around
22 them.

23 If we look at law enforcement, we want to ensure that
24 they are healthy themselves and that they're also doing best
25 practice with the people they're engaging and that doesn't

1 always need to be jail or incarceration, that there might be
2 other diversions or pathways for folks.

3 And then, similarly, that as we look at the long-term,
4 we need healthy grand families. We have lots of
5 grandparents raising grandchildren and we need -- or kinship
6 care, which means another loved one of an individual raising
7 a child, and those often don't go through the formal foster
8 care system. And so, they need support. And the foster
9 care system needs support.

10 So, as we look at all of those systems the long-term
11 approaches go through each of those and how they can be
12 connected because all of this is what we would deem
13 intersectional. It all intersects with each other and you
14 can't kind of address one issue without addressing the
15 others.

16 **Q.** And have most of the programs that you have discussed
17 with the Court, have those been grant funded?

18 **A.** All exclusively have been grant funded.

19 **Q.** And what's the difficulty with that?

20 **A.** Well, the grant cycle changes, so you never know what
21 grant is going to come out. So, at any given time the
22 federal government can change their funding structure and
23 goals and then they're going to release a grant. And what
24 happens is you --

25 Let's take SAMSHA, for example, the Substance Abuse and

1 Mental Health Administration. They may release a grant and
2 that grant is only eligible to academic institutions or
3 community behavioral health centers that have two years of a
4 licensed behavioral healthcare center certificate, which for
5 a long time, we didn't have. We didn't have two years of an
6 LBHC, a licensed behavior, which means we've gone through
7 all of the codes and credentialing for the State of West
8 Virginia and the Medicaid payers, the MCOs. So, Project
9 Hope and PROACT are now LBHCs.

10 But before, we weren't eligible because we didn't have
11 that two-year experience. So, any grant that they released
12 that required that, we couldn't apply for. Now we can.

13 But so, if we take any grant before, automatically we
14 weren't eligible for that federal funding. If we now say
15 we're eligible for that funding we have to write -- the
16 grant will come out and it will say this grant targets the
17 expansion of medication assisted treatment in rural
18 communities and, if that's SAMHSA, that's one definition of
19 a rural community, and if that's HRSA, which is another
20 funder, the Human -- Health and Human Resources
21 Administration, they have a completely different definition
22 of rural communities. So, each of those would lead to
23 Cabell County being eligible or not eligible for the grant.

24 So again, we might get into it and realize we can't do
25 it. But let's say we are perfectly eligible and the grant

1 is to expand medication assisted treatment. You are
2 required to respond to what they call the RFA and -- or the
3 call for applications, call for funding applications or
4 awards, and you write normally 10 or 20 pages of a specific
5 format. It's a very, very detailed format with a budget and
6 a budget narrative defining exactly how you'll spend that
7 money.

8 And then any -- if awarded any deviation of any line
9 item of ten percent has to go back to the funder to explain
10 why. And there's normally stipulations. A certain amount
11 can go to what we call overhead or indirect costs like
12 through the university. A certain amount of the grant could
13 be used for the evaluation purposes and they might require
14 ten percent or twenty percent to go to evaluation.

15 And they might say -- and none of that is ever allowed
16 for what we call bricks and mortar. So, no federal funding
17 is normally allowed for any type of construction or
18 renovation of any kind, this being one of our largest
19 barriers often. It was our barrier to the Project Hope
20 grant.

21 So, as -- you then sort of go through that process.
22 You write it and you'll say this is exactly what we'll do
23 with this amount of money. And they say, if awarded, you
24 have six months to implement the project or -- or start
25 project and, if you can't demonstrate it, you lose your

1 funding.

2 So, if awarded -- now, everybody across the country is
3 applying and everybody believes they deserve it just as much
4 as everyone else. And simple things could be used to kick
5 you out of the cycle. Incorrect, you know, page, not
6 following the format guidelines is an automatic dismissal,
7 but we hope we wouldn't make such a silly mistake over such
8 big, important things, but little things can happen.

9 And then that goes in and it's graded or rated normally
10 by a series of reviewers that move you forward in the
11 process and then to a final review process that is either
12 awarded or not.

13 And they may say there's a number of awards, like ten
14 awards, or they say we have \$20 million and so, submit your
15 project for no more than this amount and we'll dole out that
16 money across the project. So, they may hold some of it if
17 they don't feel as though all the projects -- that there's
18 enough projects that meet their standards. So, at any given
19 time, we can spend a lengthy period of time working on a
20 grant, getting all of the community partners because they
21 always require collaboration, and all the letters and
22 Memorandums of Understanding that dictate that, and then
23 submit, and then you wait.

24 And it could be 6-9 months before you find out and
25 sometimes it's just an e-mail that says thank you for

1 applying. You were not awarded. Sometimes you see the
2 press release from another community that says they were
3 awarded. And sometimes you get the very lucky e-mail that
4 says you were awarded.

5 And then you scramble. You figure out how to start
6 doing the work immediately. And that's both an exciting and
7 anxious process because it means we're going to make change,
8 but it means we have often 4-6 months to get that up and off
9 the ground. And we've -- we have not returned any of our
10 grants for noncompliance in that timeline.

11 **Q.** And, Dr. O'Connell, as opposed to depending upon the
12 grant process, what's needed in the community?

13 **A.** Long-term sustainable reliable funding. If I didn't
14 have to spend -- maybe sometimes this past two months, maybe
15 half of my time was spent on three grants that we've
16 submitted that we won't know if we'll receive. And we work
17 on those -- I worked on a grant until the night before I
18 delivered. That's how important these grants are to get
19 out.

20 And so, we're constantly sort of working on that and we
21 don't know if we'll get awarded. So, if we knew that there
22 was reliable funding, I can't even imagine what all that
23 could be done to actually make a difference if it wasn't
24 chasing the new guidelines from the federal administration
25 and the next new grant that launches.

1 MS. QUEZON: Your Honor, may I have a moment to
2 confer?

3 THE COURT: Yes.

4 (Pause)

5 MS. QUEZON: We pass the witness at this time,
6 Your Honor.

7 THE COURT: All right. Cross examine, Mr. Ruby?

8 MR. RUBY: Yes, Your Honor.

9 May I proceed, Your Honor?

10 THE COURT: Yes.

11 **CROSS EXAMINATION**

12 **BY MR. RUBY:**

13 **Q.** Good morning, Dr. O'Connell. How are you?

14 **A.** Good morning. Thank you. I'm fine. How are you?

15 **Q.** Fine, thanks. My name is Steve Ruby. I'm representing
16 Cardinal Health. It's good to see you.

17 **A.** Good to see you, as well.

18 **Q.** You were on the radio not long ago, weren't you,
19 Doctor?

20 **A.** I was.

21 **Q.** I think -- I think I heard your voice on my drive into
22 work the other day. You had an interview on West Virginia
23 Public Broadcasting?

24 **A.** I did.

25 **Q.** And in that interview you were commenting on this case;

1 is that right?

2 **A.** Yes.

3 **Q.** And in particular you were asked what do you think a
4 big settlement for the County and City could accomplish; is
5 that right?

6 **A.** That is true.

7 **Q.** And in your answer you said ideally it would mean
8 multi-millions of dollars coming to these communities; is
9 that right?

10 **A.** I don't remember my exact quote.

11 **Q.** But fair to say that before you came here to testify,
12 you were in the news media talking about what you thought
13 the plaintiffs ought to get out of this case, right?

14 **A.** I was asked what I believed a settlement could do and I
15 responded.

16 **Q.** Let's talk about the Resiliency Plan, Dr. O'Connell.
17 You spoke about that with Ms. Quezon, correct?

18 **A.** Yes.

19 **Q.** And you were one of the key people who was involved in
20 preparing that plan?

21 **A.** Yes.

22 **Q.** Now, you talked about the meeting that was the genesis
23 of the origin of the Resiliency Plan, correct?

24 **A.** Yes.

25 **Q.** And that was a meeting that happened around March of

1 2019; does that sound right?

2 **A.** I believe so.

3 **Q.** And plaintiffs' counsel, counsel for Cabell County
4 here, was present at that meeting; is that right?

5 **A.** Paul Farrell was present for the meeting.

6 **Q.** And Mr. Farrell spoke in the meeting?

7 **A.** He did.

8 **Q.** He took a leadership role in the meeting?

9 **A.** He spoke in the meeting.

10 **Q.** I'm going to show you, Dr. O'Connell, an e-mail that
11 was sent in the -- in the wake of that meeting and this is a
12 document that's been marked as DEF-WV-778. Do you have that
13 document in front of you, Dr. O'Connell?

14 **A.** I do.

15 **Q.** And this -- this document is an e-mail from Dr.
16 Stephen Petrany; is that right?

17 **A.** This is.

18 **Q.** And I believe you testified earlier that Dr. Petrany is
19 your boss?

20 **A.** He is.

21 **Q.** He's the Chair of the Department of Family Medicine and
22 Community Health at Marshall, correct?

23 **A.** Correct.

24 **Q.** He's been teaching and practicing medicine in
25 Huntington since 1989 or thereabouts?

1 **A.** I have no idea.

2 **Q.** He's -- he's one of the founders of PROACT; is that
3 right?

4 **A.** He is a member of the PROACT Board.

5 **Q.** And you testified about PROACT yesterday?

6 **A.** I did.

7 **Q.** That's a major provider now of addiction treatment
8 services in Huntington, right?

9 **A.** One of the -- one of them.

10 **Q.** And Dr. Petrany sent the e-mail that you have in your
11 hand now to a group of people who were present at the
12 meeting that Mr. Farrell convened; is that right?

13 **A.** Correct.

14 **Q.** And is that -- is that correct to say the meeting was
15 convened by Mr. Farrell?

16 **A.** I don't know.

17 **Q.** It was held at a -- at his family's law firm; is that
18 right?

19 **A.** It was held at a law firm downtown. To say that I know
20 any of the law firms downtown would be above my expertise.

21 **Q.** And one of the people who received this e-mail was you,
22 correct?

23 **A.** I am on this e-mail.

24 **Q.** And you recognize this as an e-mail that Dr. Petrany
25 did send to you, correct?

1 **A.** I believe so.

2 MR. RUBY: Your Honor, I would move the admission
3 of DEF-WV- 778.

4 THE COURT: Is there any objection?

5 MS. QUEZON: No, Your Honor.

6 THE COURT: It's admitted.

7 BY MR. RUBY:

8 **Q.** The subject line of this e-mail, Dr. O'Connell, is
9 Comprehensive Plan to Address the Impact of the Opioid
10 Crisis. Do you see that?

11 **A.** I do.

12 **Q.** And it begins, hello all. I am writing you as a
13 participant in the meeting last week that focused on
14 developing a comprehensive integrated "abatement" plan for
15 our community to address the impact of the opioid crisis
16 going forward. Did I read that correctly?

17 **A.** You did.

18 **Q.** And you understood that that plan was going to be used
19 in this litigation, right?

20 **A.** I did not.

21 **Q.** Do you recall, Dr. O'Connell, giving a deposition in
22 this case last year --

23 MS. QUEZON: Mr. Ruby, I'm sorry. Objection to
24 the time frame of when she either -- if you could just clear
25 that up. It may -- it may clear it up.

1 THE COURT: Can you clear that up, Mr. Ruby?

2 MR. RUBY: Yes.

3 BY MR. RUBY:

4 Q. So, at any point Dr. O'Connell, did you understand that
5 the -- that the plan that was discussed at that meeting was
6 going to be used in this litigation?

7 A. Anytime did I understand? When in that initial meeting
8 I did not -- it was not my awareness that the plan was
9 necessarily something that was going to be used in further
10 -- future litigations.

11 Q. But the litigation, this litigation, was discussed in
12 that meeting, correct?

13 A. I believe it was brought up.

14 Q. And the plan that ultimately became the Resiliency Plan
15 was discussed in that meeting, correct?

16 A. The idea of the community having a strategic plan
17 moving forward was braced.

18 Q. And, in particular, in the e-mail that Dr. Petrany sent
19 shortly after the meeting, he described it as an "abatement"
20 plan; is that right?

21 A. With quotes, yes.

22 Q. And do you know what he meant by those quotes?

23 A. I do not. Not my e-mail.

24 Q. And, at some point, you did come to understand that the
25 plan was going to be used in this litigation, correct?

1 **A.** Can you clarify? At some point, did I understand that
2 our plan could be used? I knew that we were creating a
3 strategic plan for our community that would be utilized to
4 move the community forward. If that was then to be chosen
5 to be a part of opioid litigation, that was beyond my --
6 beyond my recommendations.

7 **Q.** And to set the time frame a little more precisely, the
8 meeting that we're talking about right now with Mr. Farrell
9 was held -- well, the e-mail is from March the 5th, 2019 and
10 it says -- it refers to a meeting last week. So, the
11 meeting was held sometime end of February, early March,
12 2019, right?

13 **A.** Seems that way, yes.

14 **Q.** And the plan was developed primarily between that point
15 and September of 2019; is that right?

16 **A.** Plan was initiated in the Summer of 2019, yes.

17 **Q.** And I'll ask the question a slightly different way. At
18 some point in that time period, you came to believe that the
19 plan was going to be used in this litigation, correct?

20 **A.** We believed at some point during that time it was made
21 -- it was -- we knew that we were working on a strategic
22 plan for our community that could be utilized by whomever it
23 was necessary to do whatever it was necessary with for the
24 benefit of our community.

25 **Q.** Let me go back to your deposition and let me just ask

1 to make the question a little more precise, Dr. O'Connell.
2 You said could be used. It was, in fact, your belief that
3 the plan would be used in this litigation, correct? And I
4 will emphasize the word "would".

5 **A.** Would be used? I assumed that it would likely be used
6 as we were putting forward a plan that was going to be for
7 the health of our community.

8 **Q.** And, again, I just want to make sure I have a clear
9 record. When you say you assumed that it would be used, do
10 you mean that you assumed that it would be used in this
11 litigation?

12 **A.** I guess so.

13 **Q.** Let's -- let's look at some of the other people who
14 were involved in the meeting with Mr. Farrell. If you've
15 got the e-mail there, Dr. O'Connell --

16 **A.** Uh-huh.

17 **Q.** Do you see the name Brian Gallagher?

18 **A.** I do.

19 **Q.** Who is Brian Gallagher?

20 **A.** Brian Gallagher works for the School of Pharmacy and he
21 is also through Marshall Health as working for the Office of
22 Drug Control Policy or the Governor's Council.

23 **Q.** He is a professor at Marshall School of Medicine -- or,
24 sorry, School of Pharmacy?

25 **A.** Yes.

1 Q. He is a pharmacist?

2 A. I believe so.

3 Q. And he is, in fact, the Chair of the Governor's Council
4 on Substance Abuse in West Virginia, right?

5 A. Yes.

6 Q. And that council covers substance abuse issues
7 throughout the entire state, correct?

8 A. Correct.

9 Q. Jerome Gilbert, do you see that name?

10 A. Yes.

11 Q. Who is Jerome Gilbert?

12 A. The current President of Marshall University.

13 Q. Do you see Michael Kilkenny?

14 A. Yes.

15 Q. Who is Dr. Kilkenny?

16 A. He is the Cabell-Huntington -- the Director of the
17 Cabell-Huntington Health Department.

18 Q. Do you see the name Gordon Merry?

19 A. I do.

20 Q. Who is Gordon Merry?

21 A. The Director of Cabell County EMS.

22 Q. Let's see. Connie Priddy?

23 A. She is -- works for Cabell County EMS and is the
24 coordinator for the Quick Response Team.

25 Q. ggwhite@jrw-advisors.com, do you recognize that?

1 **A.** I do not.

2 **Q.** Do you know who Gary White is?

3 **A.** I do not.

4 **Q.** If I asked you if you remember that Gary White is the
5 former President of Marshall University, would that ring a
6 bell?

7 **A.** It would not.

8 **Q.** karen.yost@prestera.org, do you see that?

9 **A.** She is the past CEO of Prestera.

10 **Q.** And what's Prestera?

11 **A.** Prestera is a community behavioral health organization,
12 one of the -- the hubs for behavioral health in West
13 Virginia, and the first organization I worked for when I
14 moved to West Virginia.

15 **Q.** And behavioral health, specifically, one of the things
16 that Prestera provides is addiction treatment; is that
17 right?

18 **A.** Correct.

19 **Q.** It's the largest or one of the largest addiction
20 treatment providers in the Tri-State area?

21 **A.** I would assume so.

22 **Q.** Beth Thompson, do you see that name?

23 **A.** Yes.

24 **Q.** Who is Beth Thompson?

25 **A.** I am not sure.

1 Q. Do you see kellisobonya@gmail.com?

2 A. Yes.

3 Q. Who's that?

4 A. Kelli Sobonya is a Cabell County Commissioner.

5 Q. And she -- before she was a Cabell County Commissioner,
6 she was also a member of the Select Committee on Substance
7 Abuse Prevention and Treatment in the West Virginia House of
8 Delegates?

9 A. I will take your word for it.

10 Q. Kevin Yingling, do you see that name?

11 A. Yes.

12 Q. Who is Dr. Yingling?

13 A. Jack of all trades. He is an internal medicine
14 physician and he does many things. He sat on, I think --
15 I'm not sure if he currently sits on the board of the
16 hospital. He is somewhat retired, but many are retired on
17 that.

18 Q. He's a doctor?

19 A. Yes.

20 Q. And he's a pharmacist?

21 A. Internal medicine, I think.

22 Q. Was he, at one point, the Dean of the School of
23 Pharmacy?

24 A. I don't think so.

25 Q. He was a former Chairman of the Board of Cabell

1 Huntington Hospital; is that right?

2 **A.** Yes, I believe so.

3 **Q.** And Cabell-Huntington is the largest hospital in the
4 Tri-State region; is that right?

5 **A.** It's now part of the Mountain Health System, but yes.

6 **Q.** That's a billion-dollar-a-year healthcare enterprise,
7 right?

8 **A.** I do not see their books.

9 **Q.** And all of these people -- I left off Todd Davies. Who
10 is Todd Davies?

11 **A.** Todd works in our department as a -- he's the Associate
12 Director of Research; whereas, I'm (unintelligible) --

13 COURT REPORTER: I'm sorry?

14 THE WITNESS: He's the Associate Director of
15 Research.

16 BY MR. RUBY:

17 **Q.** Mr. Davies, Dr. Davies, is the Associate Director of
18 Research for the Department of Family Medicine and Community
19 Health?

20 **A.** For the Division of Addiction Sciences.

21 **Q.** For the Division of Addiction Science. And all of
22 these people were in this meeting in February, March of 2019
23 about the development of the abatement plan Dr. Petrany
24 refers to in the e-mail, correct?

25 **A.** I believe they were in attendance. I can recall most

1 of them. There's a few I don't remember being there.

2 **Q.** Now, collectively, this is a group with a tremendous
3 amount of knowledge about addiction treatment in Cabell
4 County specifically, right?

5 **A.** Yes.

6 **Q.** And it's a group that has a tremendous amount of
7 knowledge about healthcare in Cabell County; is that right?

8 **A.** Yes.

9 **Q.** And that includes Huntington, of course, correct?

10 **A.** Yes.

11 **Q.** And one of the results of the meeting Dr. Petrany
12 refers to in the e-mail is that Dr. Petrany himself was
13 selected to lead the development of the Resiliency Plan,
14 right?

15 **A.** Yes.

16 **Q.** And you worked closely with him to do that, correct?

17 **A.** Yes.

18 **Q.** After the meeting with Mr. Farrell, you and Dr. Petrany
19 and others in your -- in your department started developing
20 a plan, correct?

21 **A.** Correct.

22 **Q.** And to do that, you talked a little bit about the
23 process with Ms. Quezon. You had meetings with community
24 leaders, correct?

25 **A.** Uh-huh.

1 Q. Including the people who were listed on this e-mail?

2 A. Most of them were not part of the focus groups but,
3 rather, we -- as the plan was developed was brought back to
4 them for feedback and input.

5 Q. These would be part of what you referred to in your
6 earlier testimony as the Advisory Board, right?

7 A. We call -- in any of our grants that's sort of common
8 language and so that's what I refer to any governing group
9 that we get together.

10 Q. And you worked with people -- these folks who are on
11 this e-mail, but also other folks who have expertise in
12 addiction treatment; is that right?

13 A. Correct.

14 Q. You work with people who have been working in addiction
15 treatment in Cabell County for a long time, have been,
16 right?

17 A. Correct.

18 Q. And you work with people -- including these people, but
19 also other people who have expertise in healthcare?

20 A. Yes.

21 Q. People who have been providing healthcare in Cabell
22 County for a long time?

23 A. Yes.

24 Q. People who have been -- who have been in the leadership
25 of healthcare organizations in Cabell County for a long

1 time, correct?

2 **A.** This would be the most senior group of people. The
3 folks that we met with for the focus groups were more folks
4 who were on the ground, implementation, doing different
5 projects and how they were struggling or succeeding in
6 those.

7 **Q.** And over a period of months, as you described a few
8 minutes ago, that group put together a draft of what
9 ultimately became the Resiliency Plan, correct?

10 **A.** Correct.

11 **Q.** Dr. O'Connell, we have marked one of those drafts as
12 DEF-WV-929. Doctor, do you recognize this as a draft of the
13 Resiliency Plan?

14 **A.** Yes.

15 **Q.** And the date on this is August 19th. Just August 19th,
16 correct?

17 **A.** Correct.

18 **Q.** But that means August 19th, 2019?

19 **A.** It does.

20 **Q.** That was the period of time when you were developing
21 this, correct?

22 **A.** Correct.

23 **Q.** I want to direct you first, Dr. O'Connell, to the
24 acknowledgments page. This is Page 1, if you're looking at
25 the pages on the document itself.

1 **A.** Yes.

2 **Q.** We also have page numbers in the lower left-hand corner
3 here, and if you're looking at those long numbers, it ends
4 with 005. Do you see that page?

5 **A.** Yes.

6 **Q.** So, this is a list in the Resiliency Plan of
7 organizations and people who contributed to the development
8 of the plan, correct?

9 **A.** Correct.

10 **Q.** And first, we have contributing organizations. Do you
11 see that section a little bit below the top part of the
12 page?

13 **A.** Yes.

14 MR. RUBY: And, Your Honor, just so we can get
15 this on the screen, I'll go ahead and move to admit
16 DEF-WV-929.

17 THE COURT: Is there any objection?

18 MS. QUEZON: It's hearsay. I don't mind it as a
19 demonstrative if she wants to talk about it.

20 MR. RUBY: And, Judge, we're not offering it --
21 certainly not offering it for the truth of the statements
22 that it contains. This is being offered as a series of
23 documents that are going to show notice to the -- to the
24 plaintiffs of what local experts estimated the appropriate
25 cost for an abatement plan would be.

1 THE COURT: I'll admit it for the limited purpose.

2 BY MR. RUBY:

3 Q. All right. So, we have contributing organizations, Dr.
4 O'Connell. Do you see that section?

5 A. Uh-huh, yep.

6 Q. The very first one is the Cabell County Commission; is
7 that right?

8 A. Correct.

9 Q. Cabell County Commission is one of the two plaintiffs
10 in this case. Did you know that?

11 A. Yes.

12 Q. And the Cabell County Commission contributed to this
13 plan, correct?

14 A. The -- with any Advisory Board there are members who
15 sit on that Advisory Board who were offered drafts or
16 examples in meetings and drafts or examples of the plan.
17 People who -- anybody who sat in one of those meetings was
18 designated a contributing organization.

19 As I referred to earlier, in Huntington, we like the
20 royal "we" and it's very important that if someone attended
21 or participated, even in a small capacity, that we engage
22 them as a contributing organization as to ensure that we're
23 collaborative as a community and not leaving folks out. So,
24 people's involvement on this list would vary greatly.

25 As -- the Joan C. Edwards School of Medicine would be

1 the writer and the predominant folks on it who did 99
2 probably percent of that work and community members who sat
3 in these different groups would be people who made up some
4 of the focus groups and/or the advisory groups, which means
5 they attended a meeting and may never have said a word. So,
6 I can't speak to each group's percentage of engagement.

7 **Q.** And I appreciate that. But when you put -- or whoever
8 put Cabell County Commission on the list of contributing
9 organizations here, they weren't making that up, were they?

10 **A.** No.

11 **Q.** Cabell County EMS, that's Emergency Medical Services,
12 right?

13 **A.** Yes.

14 **Q.** They're listed as a contributing organization here?

15 **A.** Uh-huh.

16 **Q.** The Cabell-Huntington Health Department, that's the
17 organization that is in charge of public health in Cabell
18 County and Huntington, right?

19 **A.** They're the Health Department.

20 **Q.** And they have a significant leadership role in public
21 health in the community?

22 **A.** Yes.

23 **Q.** And the Health Department is listed as a contributing
24 organization here, correct?

25 **A.** Yes.

1 Q. Cabell Huntington Hospital, we already talked about
2 them. Largest hospital in the county, right?

3 A. Yep.

4 Q. And they're listed as a contributing organization here?

5 A. Yep.

6 Q. Marshall Health, that's the medical practice side of
7 Marshall; is that right?

8 A. Yes. We need a Venn diagram if you'd like me to
9 explain the Marshall, Marshall Health, Marshall Joan C.
10 Edwards School of Medicine and Marshall University Research
11 Corporation.

12 Q. But it is correct to say that Marshall Health is an
13 organization affiliated with the university that handles the
14 clinical or practical treatment side of the university's
15 healthcare mission?

16 A. Just for the sake of clarification, Marshall University
17 has, as part of it, both separate and equal, the Joan C.
18 Edwards School of Medicine, which is the med school. The
19 physicians who practice as part of the med school, so the --
20 the educators and the medical school also practice. They
21 practice under Marshall Health.

22 So, when we sit in the Department of Family and
23 Community Health, that's academic under the Joan C. Edwards
24 School of Medicine, but also, physicians as family doctors
25 under family medicine under Marshall Health.

1 And then, because it will come up, the Marshall
2 University Research Corporation, which we refer to as MURC,
3 M-U-R-C, which is the second of the second column, is the
4 organization where we -- all federal funds go through
5 because that's how a university works. You have a research
6 corporation. So they're the grant managers for any federal
7 money.

8 **Q.** And Marshall Health is a -- it's a big medical
9 practice, right?

10 **A.** Yes.

11 **Q.** I'm sorry. Go ahead.

12 **A.** Yes.

13 **Q.** 40-plus clinical locations, correct?

14 **A.** I assume. I'll take your word for that.

15 **Q.** And over \$200 million a year in revenue from that
16 medical practice, correct?

17 **A.** I do not know.

18 **Q.** Marshall University's listed here as a contributor. Do
19 you see that?

20 **A.** Yes.

21 **Q.** And Marshall University is another institution that's
22 there in Cabell-Huntington, in Huntington, correct?

23 **A.** Yes. That umbrella structure of the university.

24 **Q.** And Marshall University itself, separate and apart from
25 the healthcare side of the house, also has a

1 \$200 million-plus budget annually, correct?

2 **A.** I do not know.

3 **Q.** Mountain Health Network, you mentioned them. That's
4 the umbrella entity that now sort of encompasses Cabell
5 Huntington Hospital and St. Mary's Hospital; is that right?

6 **A.** Cabell Huntington Hospital and St. Mary's Hospital
7 merged two, three years ago and they are now united under
8 the Mountain Health Network.

9 **Q.** Presteria. We talked about them. They do addiction
10 treatment is that right?

11 **A.** Yes, as one facet.

12 **Q.** PROACT, again, you talked a little bit about PROACT
13 yesterday. Now, as I understand it, PROACT is a
14 collaborative project of Cabell Huntington Hospital, St.
15 Mary's Hospital, Marshall Health, maybe some other
16 organizations, who are all focused through PROACT on
17 addiction treatment, correct?

18 **A.** Yes. Cabell Huntington Hospital, St. Mary's Hospital,
19 Marshall Health, the Joan C. Edwards School of Medicine and
20 Thomas Health.

21 **Q.** And PROACT treats hundreds of people every year who are
22 suffering from addiction, correct?

23 **A.** Since its conception, currently sits with 540-plus
24 individuals right now.

25 **Q.** St. Mary's Medical Center is listed as a contributor.

1 Do you see that?

2 **A.** Yes.

3 **Q.** St. Mary's is the other major hospital in Cabell
4 County, correct?

5 **A.** Yes.

6 **Q.** It serves patients from all over the Tri-State area,
7 right?

8 **A.** Yes.

9 **Q.** And St. Mary's Medical Center has over a \$450 million
10 annual budget, correct?

11 **A.** I don't know.

12 **Q.** Valley Health Systems, they're listed as a contributor.
13 Do you see that?

14 **A.** Yes.

15 **Q.** That's the federally funded healthcare clinic in Cabell
16 County, correct?

17 **A.** They are a federally qualified healthcare center, an
18 FQHC, in our community.

19 **Q.** And they're also a major provider of healthcare
20 services in the community, correct?

21 **A.** Yes.

22 **Q.** Including addiction treatment services?

23 **A.** Uh-huh.

24 **Q.** And then, last, we have the West Virginia DHHR Office
25 of Drug Control Policy. Do you see that?

1 **A.** Yes.

2 **Q.** And that is the statewide coordinating body here in
3 West Virginia for substance abuse issues, correct?

4 **A.** Correct.

5 **Q.** Let's look at some of the individual contributors to
6 the development of this plan. And I won't name everybody --

7 **A.** Okay.

8 **Q.** -- because it's a long list, but do you see the name
9 Carol Bailey?

10 **A.** Yes.

11 **Q.** And Ms. Bailey is Director of the United Way of the
12 River Cities, correct?

13 **A.** Correct.

14 **Q.** We talked about Dr. Davies.

15 Do you see Brian Gallagher --

16 **A.** Yes.

17 **Q.** -- here again on this list? We talked about him
18 earlier. In addition to being a pharmacist, he's also an
19 attorney, correct?

20 **A.** I don't know.

21 **Q.** You aren't aware that he used to be the General Counsel
22 for WVU Hospitals?

23 **A.** I don't know.

24 **Q.** WVU Hospitals, though, you do know is the largest
25 medical provider in the state, correct?

1 **A.** I believe so.

2 **Q.** Dr. Gilbert is here. There's a new name that we didn't
3 see before on the e-mail, Zach Hansen. Do you see that?

4 **A.** Yes.

5 **Q.** Mr. Hansen -- Dr. Hansen is a physician, correct?

6 **A.** Correct.

7 **Q.** And he worked for a number of years in addiction
8 treatment at Valley Health, which we talked about just a
9 minute ago, correct?

10 **A.** Correct.

11 **Q.** And now he works for you?

12 **A.** Correct.

13 **Q.** He's the Medical Director recently hired at the
14 Division of Addiction Sciences?

15 **A.** Correct.

16 **Q.** And did you, yourself, hire him or choose him to be the
17 medical director?

18 **A.** I was involved in that process.

19 **Q.** Tim Hazelett, do you see that name?

20 **A.** Yep.

21 **Q.** Mr. Hazelett is the Chief Operating Officer of the
22 Cabell-Huntington Health Department, correct?

23 **A.** Correct.

24 **Q.** And Dr. Kilkenney we've talked about already. He's in
25 charge of the Health Department, correct?

1 **A.** Correct.

2 **Q.** You see Dr. Petrany. He, of course, we've already
3 discussed.

4 Steve Williams, do you see that name?

5 **A.** I do.

6 **Q.** Mr. Williams is the Mayor of the City of Huntington,
7 correct?

8 **A.** Correct.

9 **Q.** And I'll go to the last name on the list. You
10 mentioned Karen Yost previously with Prestera.

11 Lisa Zappia, do you recognize that name?

12 **A.** I do.

13 **Q.** And Lisa Zappia, within the last couple of months, took
14 Ms. Yost's place as the CEO of Prestera; is that correct?

15 **A.** Correct.

16 **Q.** And prior to that, Ms. Zappia, for many years, was the
17 Clinical Director at Prestera, correct?

18 **A.** Correct.

19 **Q.** And in that capacity she, of course, worked with
20 addiction treatment, correct?

21 **A.** Correct.

22 **Q.** These -- these folks that are listed here, are these
23 folks, or at least some of these folks, the members of which
24 you referred to as the Advisory Board for the development of
25 the plan?

1 **A.** Correct.

2 **Q.** So, you -- you or others who were involved in
3 developing the plan sent drafts of it over time as it
4 developed to the folks who are on this list, correct?

5 **A.** Not necessarily.

6 **Q.** Did you send any drafts of the plan to the people on
7 this list?

8 **A.** Some.

9 **Q.** Some drafts or some people?

10 **A.** Both.

11 **Q.** And the people that -- the people that are on this list
12 that received the drafts of the Resiliency Plan as it was
13 developed, many of them commented on those drafts, correct?

14 **A.** Many.

15 **Q.** I will ask you, Doctor, if you would, to turn to Page
16 25 --

17 **A.** Yep.

18 **Q.** -- of the plan. It's 029, if you're looking at the
19 number all the way at the bottom left. Do you see that?

20 **A.** Yes.

21 **Q.** And the heading on this page is Allocation of Funds,
22 correct?

23 **A.** Correct.

24 **Q.** And, again, just to orient us as to time, the date on
25 this draft was August 19th, 2019, correct?

1 **A.** Correct.

2 **Q.** And on this allocation of funds page, there's a chart
3 that breaks down all of the various components of the
4 Resiliency Plan, correct?

5 **A.** Correct.

6 **Q.** And then next to each one of those there's a dollar
7 figure, right?

8 **A.** Correct.

9 **Q.** And so, at the top the very first item, you see the
10 phrase Addiction Science Institute, correct?

11 **A.** Correct.

12 **Q.** And the idea with that in the Resiliency Plan was to
13 build a new institute at Marshall that would expand on the
14 work that your division does, correct?

15 **A.** It was to have the ability to move flexibly within the
16 plan, the structure for that.

17 **Q.** And part of what was contemplated in the Resiliency
18 Plan for the Addiction Science Institute was, and I will
19 quote here, "bricks and mortar for housing the institute";
20 is that right?

21 **A.** Correct.

22 **Q.** And -- go ahead. I'm sorry.

23 **A.** On this draft.

24 **Q.** Okay. And part of what's contemplated was faculty
25 positions, correct?

1 **A.** Correct.

2 **Q.** And part of what's contemplated, of course, would be an
3 operating budget for this institute that was being proposed
4 here, correct?

5 **A.** Correct.

6 **Q.** And the cost that is listed here for that on the
7 allocation of funds page from August the 19th of 2019 was
8 \$172 million, correct?

9 **A.** Uh-huh, correct.

10 **Q.** We'll cover some of the other larger items on the list,
11 Doctor, and I want to focus particularly on treatment. Do
12 you see the line -- I think it's one, two, three, four, five
13 lines down on the chart here that says outpatient and
14 inpatient/residential services?

15 **A.** Yes.

16 **Q.** So that -- that line, what that's referring to is
17 various forms of treatment for addiction or Substance Use
18 Disorder, correct?

19 **A.** Correct.

20 **Q.** And that would include medically assisted treatment,
21 correct?

22 **A.** Correct.

23 **Q.** Which is a phrase that encompasses treatment with
24 things like Suboxone or Methadone, correct?

25 **A.** Correct.

1 Q. The treatment item that's listed here also includes
2 outpatient treatment as the title of the item suggests,
3 right?

4 A. Correct.

5 Q. And it would cover inpatient treatment, as well?

6 A. Correct.

7 Q. And it would also cover residential treatment, correct?

8 A. Correct.

9 Q. And if you look at the notes here in the third column,
10 this category would also cover treatment or efforts relating
11 to Neonatal Abstinence Syndrome, correct?

12 A. Correct.

13 Q. And the cost that is listed for this, this addiction
14 treatment item, is \$23 million, correct?

15 A. That's what it says.

16 Q. What period of time -- I'll back up. You spoke in your
17 testimony when Ms. Quezon was questioning you about the
18 various time periods that you or others working on the plan
19 had in mind when you were developing it. What period of
20 time was this \$23 million for treatment supposed to cover?

21 A. I don't recall.

22 Q. I'm not asking you for a precise number. Was it a
23 year, five years, 10 years, 15 years?

24 A. Based on the small amount, probably my first estimate
25 of the 3-5 year range.

1 **Q.** Do you see the next item, Community Health/Social
2 Supports?

3 **A.** Yes.

4 **Q.** And this item -- and you can take a minute, if you
5 want, and look at the note in the last column, but that
6 includes building housing, correct?

7 **A.** Yes. Development doesn't necessarily mean
8 construction, but yeah.

9 **Q.** Development of housing, correct?

10 **A.** We sort of refer to stuff like we need to work on the
11 development around this idea. I don't mean it necessarily
12 as a developer of construction but --

13 **Q.** And it also includes in some fashion the creation of a
14 transportation network. Do you see that?

15 **A.** Yes.

16 **Q.** And the cost for that item that includes housing and a
17 transportation network, that's \$20 million, right?

18 **A.** That's what it says.

19 **Q.** Below that, a few more lines down, do you see data and
20 research?

21 **A.** I do.

22 **Q.** And this one, if you look at the notes there on the
23 last line, this one includes another research facility,
24 right?

25 **A.** It -- it says the words research facility.

1 Q. So, there's another building involved in this one?

2 A. No.

3 Q. What was the research facility there?

4 A. I believe when we were sort of just referring to data
5 and research that it's the space for, you know, a lab or out
6 -- any type of technical space for that.

7 Q. And it includes a research staff for this aspect of the
8 project; is that right?

9 A. It -- yes.

10 Q. And the cost that's listed for that item is
11 \$25 million, right?

12 A. That's with it says.

13 Q. And then the list item here on the list is education
14 and economic development, right?

15 A. Yes.

16 Q. So, economic development, according to the description
17 that we have here in the document, includes things like
18 investment in new local businesses; is that right?

19 A. Uh-huh.

20 Q. And a community career needs assessment; is that right?

21 A. Uh-huh.

22 Q. And the dollar figure that's listed for the category
23 that includes those things is \$30 million, correct?

24 A. That's what it says.

25 Q. Now, that was the August 19th version of the plan. Do

1 you recall, Doctor, that in a later version of the plan
2 those cost figures increased?

3 **A.** They did.

4 **Q.** The -- so the -- well, strike that. Let's go ahead and
5 look at the document where the cost figures did increase as
6 you just indicated. I'm going to ask you to take a look at
7 what's been marked as DEF-WV-1457.

8 **A.** Okay.

9 **Q.** Dr. O'Connell, do you recognize this as another draft
10 of the Resiliency Plan?

11 **A.** One of many.

12 **Q.** And I'll represent to you incidentally that although
13 the date on the front of this document says October 3rd, the
14 name of the file, the actual pdf file -- sorry, the word
15 file, is Huntington Resiliency Plan 8/20 draft JLM.docx and
16 that it was attached to an e-mail dated August 20th of 2019.
17 Do you recall that the date field on the front of the
18 Resiliency Plan working document was one of those that
19 updates automatically when you open it?

20 **A.** I don't believe so, actually.

21 **Q.** I will -- I'll orient this in the -- well, just for the
22 sake of having it, if you don't recall that, I'm going to go
23 ahead and show you the e-mail that this was attached to.

24 **A.** Okay.

25 **Q.** Which is DEF-WV-1456. And, Dr. O'Connell, I show you

1 this just to orient you in time as we walk through the
2 various drafts. The document that is now marked DEF-WV-1457
3 --

4 **A.** Yes.

5 **Q.** -- which is the version of the plan that you just got,
6 was an attachment to this e-mail sent from Dr. Petrany on
7 August the 20th, 2019 to Jodi Maiolo in the document that is
8 marked 1456. Do you see that in the -- sorry -- the e-mail,
9 the one page?

10 **A.** I assume so.

11 **Q.** Who is Jodi Maiolo?

12 **A.** She is -- she works for me. She's one of our special
13 projects. All other duties as assigned.

14 MR. RUBY: And, Your Honor, I would move to admit
15 DEF-WV-1456 and 1457.

16 THE COURT: Any objection?

17 MS. QUEZON: I'm not sure it's an objection, but
18 there's no Bates number on the -- we were trying to locate
19 it on 1457, Mr. Ruby. I just --

20 MR. RUBY: You mean the original production Bates
21 number?

22 MR. ACKERMAN: Yes. Just to confirm.

23 MR. RUBY: Well, we can get you that. There is a
24 version that -- oh, I see. It's because it's native.

25 MS. QUEZON: I see.

1 MR. RUBY: It was a Word document.

2 MS. QUEZON: Okay.

3 MR RUBY: We can match it up later, if you all
4 want.

5 MS. QUEZON: If he's offering it for the same
6 purpose as the previous one, then I assume your ruling will
7 stand.

8 THE COURT: Offered for the limited purpose, Your
9 Honor?

10 MR. RUBY: Yes, Your Honor.

11 THE COURT: What's the relevance to 1456?

12 MR. RUBY: 1456 is simply to orient this in time,
13 Your Honor, to -- we're walking through a chronology of
14 these drafts and the date was messed on 1457 because of a
15 computer issue.

16 THE COURT: All right. They're admitted.

17 MR. RUBY: Thank you, Your Honor.

18 BY MR. RUBY:

19 **Q.** Dr. O'Connell, I will ask you in 1457, which is the
20 version of the plan that you were just handed, to turn to
21 Page -- the internal pagination is obscured, so I will ask
22 you to look at Page 030.

23 **A.** Yep.

24 **Q.** And this is another version of the allocation of funds
25 page, correct?

1 **A.** Correct.

2 **Q.** Do you see the first item there is the Addiction
3 Science Institute?

4 **A.** Yep.

5 **Q.** And here in this version from August the 20th, the cost
6 of that line or the cost associated with that line, has gone
7 up to \$365 million, correct?

8 **A.** Correct.

9 **Q.** And do you see the line -- do you recall that we looked
10 at the line for treatment a few minutes ago, Outpatient and
11 Inpatient/Residential Services? Do you see that?

12 **A.** Yes.

13 **Q.** And that line in this draft from August the 20th, a day
14 after the one we looked at initially, has gone up to
15 \$50 million; is that right?

16 **A.** Correct.

17 **Q.** And then, if you look at the bottom of the page, or
18 near the bottom of the page, just below the chart, there's a
19 line in bold with an asterisk beside it. Do you see that?

20 **A.** Yep.

21 **Q.** And that says each figure includes funding for
22 necessary long-term sustainability of all areas listed
23 considering estimated impacts over four decades. Do you see
24 that?

25 **A.** Yes.

1 **Q.** So, the dollar figures that are listed here were
2 increased based on a 40-year or 4-decade projection of
3 funding needs; is that right?

4 **A.** I guess.

5 **Q.** The -- and that was, in fact, as a result -- that
6 increase was because of input that you received from the
7 Advisory Board of the larger team that was working on this,
8 correct?

9 **A.** I don't know.

10 **Q.** And I'll ask the question in a more specific way. Do
11 you recall that the increase that's reflected in this draft
12 of the plan was because of the input that you received from
13 the larger team that was assisting with it?

14 **A.** I don't believe so.

15 **Q.** I'm going to have to find the date on this deposition.
16 Do you recall that last year you gave a deposition in this
17 case, Doctor?

18 **A.** Yes.

19 **Q.** There we go. And that was on July the 31st of 2020?

20 **A.** Yes.

21 **Q.** And when you gave a deposition you were under oath,
22 correct?

23 **A.** Yes.

24 **Q.** And you told the truth in that deposition?

25 **A.** Yes.

1 MR. RUBY: Mr. Simmons, if you have the
2 deposition, could we go to Page 215, please?

3 BY MR. RUBY:

4 Q. And there's a back-and-forth here, Dr. O'Connell, about
5 -- and I'll direct your attention to Line 4. We'll start
6 there in the transcript. And I'll represent to you that
7 this is a transcript of the deposition that you gave on
8 July 31st of last year.

9 A. Yes.

10 Q. And, again, this is just to orient you as to the
11 subject that was being discussed. The question was, okay.
12 Now, if we compare the August 19th draft for the Addiction
13 Sciences Institute at \$172 million with the August 21st
14 draft, it goes up almost \$200 million, right? And your
15 answer is uh-huh. Do you see that?

16 A. Yes.

17 Q. And that increase in \$200 million from one draft to
18 another, that refers to the increased figures that we were
19 just looking in the 40-year version of the plan, correct?

20 A. Yes.

21 MR. RUBY: And, Mr. Simmons, if you can clear that
22 and then cull out the -- beginning with Line 9.

23 BY MR. RUBY:

24 Q. Dr. O'Connell, the question here is, okay. Can you
25 tell me what analysis was done between August 19th and

1 August 21st to increase the costs of the Addiction Sciences
2 Institute by \$200 million? Do you see that?

3 **A.** Yes.

4 **Q.** And the answer is the meeting that occurred on the 20th
5 was to bring any proposal like we did with everything, was
6 this iterative process where we started with focus groups,
7 qualitative analysis, brought the qualitative analysis back
8 to the team, worked on the drafts back and forth. The same
9 thing was done with this. So, when the larger team saw the
10 amounts allocated, they disagreed strongly and said,
11 obviously, that this was meant to be a multi-generational
12 approach and not just the expansion of the existing
13 services. Do you see that?

14 **A.** Yes.

15 **Q.** And when you gave that, answer you were testifying
16 truthfully, correct?

17 **A.** Yes.

18 **Q.** And so, it was input from the larger --

19 **A.** I did not recall that we had a meeting on August 20th
20 of 2019.

21 **Q.** And just for clarity of the record, Doctor, it was, in
22 fact, the input of the larger team that led to the increase
23 or the change to the 40-year version of the plan?

24 **A.** That led to their acknowledgment that the prior numbers
25 were woefully incorrect.

1 Q. And to be specific, it was -- it was the input from the
2 larger team that led to the shift that we saw in the most
3 recent draft of the 40-year version of the plan, correct?

4 A. And it was the input of the larger team that those
5 numbers were consistently woefully incorrect and that we did
6 not have the expertise to make those decisions.

7 Q. We'll talk about that.

8 Now, the contributors to this version of the plan,
9 Doctor, I'll direct you again to Page -- it's Page 1 and
10 it's Page 4, if you're looking at the numbers at the bottom.
11 I'll give you a minute to take a look at it.

12 Contributors for this version of the plan which shows
13 \$50 million for treatment over a period of 40 years --

14 A. Sorry, which one are you -- you're on the same plan?

15 Q. The 40-year version.

16 A. Okay.

17 Q. The contributors to this version of the plan which
18 shows \$50 million for addiction treatment over 40 years,
19 that's the same list of contributors that was on the version
20 we previously looked at, correct?

21 A. I actually think there's differences.

22 Q. Well, it includes here on the 40-year version of the
23 plan with \$50 million for treatment over 40 years. The
24 contributors include Cabell Huntington Hospital, right?

25 A. Right. I mean, the individual contributor list did

1 make a change, just for the sake of accuracy.

2 Q. I'm sorry. Did or did not?

3 A. Did.

4 Q. And who was the -- what was the change?

5 A. I'm trying to look, but you note the columns are
6 different between the two. So --

7 Q. Oh, I see. Well, the -- what I wanted to ask you about
8 is the Health Department is still there?

9 A. Yes.

10 Q. Cabell Huntington Hospital is still there?

11 A. Yes.

12 Q. Prestera is still there?

13 A. Yes.

14 Q. St. Mary's is still there?

15 A. Yes.

16 Q. Kevin Yingling is still there?

17 A. Yes.

18 Q. Brian Gallagher is still there? Karen Yost is still
19 there? I'm sorry. I --

20 A. Yes.

21 Q. Did you answer as to Gallagher?

22 A. Yes. Yes.

23 Q. Karen Yost is still there?

24 A. Yes.

25 Q. Lisa Zappia is still there?

1 **A.** Yes.

2 **Q.** Zach Hansen is still there?

3 **A.** Yes.

4 **Q.** And shortly after this, Doctor --

5 MR. RUBY: Judge, do you want to break?

6 THE COURT: This is a good place for a break.

7 Let's take about ten minutes.

8 (Recess taken)

9 (Proceedings resumed at 10:40 a.m. as follows:)

10 THE COURT: You may proceed.

11 MR. RUBY: Thank you, Your Honor.

12 BY MR. RUBY:

13 **Q.** Dr. O'Connell, before the break we were talking
14 about the 40-year version of the Resiliency Plan;
15 correct?

16 **A.** Correct.

17 **Q.** And that was, I think, the -- the transmittal date on
18 that was August the 20th of 2019; correct?

19 **A.** According to the email.

20 **Q.** Now, shortly after that, the plan was sent to Mr.
21 Farrell, counsel for the county; correct?

22 **A.** I don't know.

23 **Q.** You did meet with Mr. Farrell about this case in
24 September of 2019; correct?

25 **A.** I believe so.

1 Q. And that meeting was at Mr. Farrell's law firm;
2 correct?

3 A. I'm not sure.

4 Q. Do you recall a meeting -- a September 21st, 2019,
5 meeting that occurred on Ninth Street in Huntington?

6 A. I believe so.

7 Q. At the Greene Ketchum law firm?

8 A. I believe if that's the name of it.

9 Q. And there were other lawyers at the meeting there as
10 well; correct?

11 A. If it's the meeting that I'm recalling, there were six
12 or seven folks in the room.

13 Q. Ms. Kearse was there?

14 A. I believe so.

15 Q. Ms. Quezon was there?

16 A. I believe so.

17 Q. There was someone who's a data specialist or works on
18 data for the plaintiffs' lawyers who was also there?

19 A. I believe so.

20 Q. And the plan -- the Resiliency Plan, the draft of it
21 was sent to Mr. Farrell before that September 21st meeting;
22 is that right?

23 A. Not by me.

24 Q. Was it sent by somebody else?

25 A. I don't know.

1 **Q.** I'm going to show you, Doctor, -- we'll do two
2 documents. One is Defendants' West Virginia 1450. Let's
3 start with this one and then we'll take a look at the
4 attachment, Doctor.

5 The email that has just been handed to you, that's an
6 email that was sent by Dr. Petrany; correct?

7 **A.** I believe so.

8 **Q.** And the recipient on the "to" line is
9 Paul@greeneketchum.com; is that correct?

10 **A.** It is.

11 **Q.** And that is -- that's my friend, Mr. Farrell; correct?

12 **A.** Yes.

13 **Q.** And this is dated August 22nd, 2019; correct?

14 **A.** Yes.

15 **Q.** Which is a just a couple days after the August 20th
16 email that the 40-year version of the plan was attached to;
17 correct?

18 **A.** Yes.

19 **Q.** And this email from Dr. Petrany with whom you were
20 working on the Resiliency Plan says --

21 MS. QUEZON: Judge, I'm going to object to
22 hearsay. The foundation hasn't been laid for this. She's
23 not on the email.

24 MR. RUBY: Your Honor, two points.

25 Number one, the email itself I'll offer in a minute.

1 But the email itself is -- it constitutes notice to
2 plaintiffs of the, the qualifications of the group that was
3 involved in preparing the Resiliency Plan. And, so, the
4 email itself comes in at least for that limited purpose.

5 And, number two, Your Honor, the witness has testified
6 already, correctly, that she was intimately involved in the
7 development of the Resiliency Plan. She worked very closely
8 with Dr. Petrany on the Resiliency Plan. And it's proper to
9 question her -- setting aside the question of admissibility
10 of the document, it's proper to question her about the
11 information that Dr. Petrany provided on the Resiliency
12 Plan.

13 THE COURT: Well, it certainly provides a basis
14 for you to question her. I'm not sure if that makes it
15 admissible. What about admitting it for the limited
16 purpose?

17 MS. QUEZON: Judge, I don't see how this email
18 does anything to, to talk about the qualifications of those
19 involved with the development of the, of the plan. And
20 she's already testified that she doesn't know whether it was
21 sent to Mr. Farrell. She has no knowledge of whether it was
22 sent to Mr. Farrell.

23 MR. RUBY: Judge, --

24 THE COURT: I'm going to let you -- I'm not going
25 to admit it. You can use it as a basis to question her.

1 MR. RUBY: Thank you, Your Honor.

2 THE COURT: Sustain the objection to the admission
3 of the document.

4 BY MR. RUBY:

5 Q. Dr. O'Connell, the, the email that you have in
6 front of you, Defendants' 1450, according to the
7 document, there was an attachment that was sent with it;
8 correct?

9 A. Correct.

10 Q. Huntington Resiliency Plan 8-22-19, that PDF?

11 A. Correct.

12 Q. And it says, "Hello Paul. Please find attached the
13 culmination of several months of work by many of the leaders
14 in our community in the fight against the opioid crisis."

15 Do you see that?

16 A. I do.

17 Q. And my question is whether you agree with the statement
18 here by Dr. Petrany that the Resiliency Plan was the
19 culmination of several months of work by leaders in the
20 community in the fight against the opioid crisis?

21 A. Do I agree with that's what's written?

22 Q. No. Do you agree with that statement by Dr. Petrany
23 that that correctly describes the group of people who worked
24 on the Resiliency Plan?

25 A. I believe that describes the contributing organization

1 and individuals.

2 **Q.** It goes on to say, Doctor, "These individuals have come
3 together to develop a visionary plan for dealing with the
4 present and future effects of that crisis upon Cabell
5 County."

6 Did I read that correctly, Doctor?

7 **A.** Correct.

8 **Q.** And my question is: Do you agree with that
9 characterization of the Resiliency Plan that Dr. Petrany
10 made, that it is a visionary plan for dealing with the
11 present and future effects of that crisis upon Cabell
12 County?

13 **A.** I believe so.

14 **Q.** And then the last sentence in that paragraph says, "In
15 coordinating this effort, I have been very impressed with
16 the intelligence and sincerity of all who took time from
17 their busy schedules to contribute."

18 Do you see that?

19 **A.** Yes.

20 **Q.** Did you agree with Dr. Petrany that you were impressed
21 with the intelligence and the sincerity of everybody who was
22 involved in putting this plan together?

23 **A.** It would be very rude to say otherwise.

24 **Q.** I'm going to -- actually, I'll ask you to take a look
25 at the last sentence here. It says, "As we discussed, I am

1 looking forward to the opportunity to review the plan with
2 you. Please let me know when you are available to meet."

3 Were you aware that Dr. Petrany had, had made this plan
4 to meet with Mr. Farrell about the Resiliency Plan?

5 **A.** I am not.

6 **Q.** Were you at the time?

7 **A.** I was not.

8 **Q.** The next document we're going to look at, Dr.
9 O'Connell, has been marked as Defendants' West Virginia
10 1451. And it is another version of the Resiliency Plan.

11 Dr. O'Connell, do you see that the date on this version
12 of the plan is August 22nd, 2019?

13 **A.** I do.

14 **Q.** Which is the same as the date of the email that we just
15 looked at from Dr. Petrany to Mr. Farrell; correct?

16 **A.** It is.

17 **Q.** And I will represent to you that this is the, this is
18 the version of the plan that was attached to that email.

19 And I will ask you to go to the Allocation of Funding
20 Allocation of Funds -- excuse me --

21 **A.** Yes.

22 **Q.** -- that's Page 27 in this version.

23 **A.** Yep.

24 **Q.** And what I'll ask you to look at first is the note, the
25 bolded note with the asterisk beside it at the bottom of the

1 page. Do you see that?

2 **A.** Yes.

3 **Q.** We looked at a similar note in the August 20th version
4 of the plan. Do you recall that?

5 **A.** Yes.

6 **Q.** And the version here says, "Each figure includes
7 funding for the essential long-term (multi-generational)
8 sustainability of all areas listed."

9 Did I read that correctly?

10 **A.** You did.

11 **Q.** Multi-generational isn't quite as precise as the four
12 decades language that we saw in the previous version, but it
13 clearly indicates a long period of time; is that right?

14 **A.** It does.

15 **Q.** And in this version with the multi-generational
16 footnote on the Allocation of Funds page, let's look again
17 at the treatment line. It has Outpatient and
18 Inpatient/Residential Services. Do you see that?

19 **A.** I do.

20 **Q.** And the dollar amount that's listed there in the
21 multi-generational version of the plan is \$50 million; is
22 that right?

23 **A.** It is.

24 MR. RUBY: Your Honor, I move to admit Defendants'
25 1451.

1 THE COURT: Any objection?

2 MS. QUEZON: I'm assuming for the same limited
3 purpose.

4 MR. RUBY: For the same limited purpose, Your
5 Honor, to show notice that was provided of the, the amount
6 that this group of experts thought was appropriate.

7 THE COURT: Well, this goes to the cost of
8 abatement, doesn't it?

9 MR. RUBY: Yes, Your Honor.

10 THE COURT: I'll admit it for the limited purpose.
11 BY MR. RUBY:

12 Q. I will next ask you to take a look, Doctor, at
13 what's been marked Defendants' West Virginia 1446.

14 MS. QUEZON: Judge, I'm going to object to this as
15 hearsay and she's not on this email either.

16 THE COURT: Well, --

17 MR. RUBY: Can I call Mr. Farrell, Your Honor?

18 THE COURT: Pardon me?

19 MR. RUBY: Can I call Mr. Farrell to authenticate
20 it?

21 MR. FARRELL: Yes, Your Honor.

22 THE COURT: He's not a credible witness, Mr. Ruby.

23 (Laughter)

24 MR. RUBY: Did you get that, Lisa?

25 COURT REPORTER: Yes.

1 MR. RUBY: I'm not going to move to admit this
2 with this witness, Your Honor.

3 THE COURT: Here again, I think this provides a
4 basis for you to question her but I'm not going to admit the
5 document.

6 MR. RUBY: Understood, Your Honor.

7 BY MR. RUBY:

8 Q. Dr. O'Connell, what you've just been handed as
9 Defendants' 1446 is an email from Dr. Petrany to Paul
10 Farrell dated September 3rd, 2019; is that right?

11 A. Sorry. I missed the last part.

12 Q. Dated -- I'll just redo the question. What you have
13 here as Defendants' 1446 is an email from Dr. Petrany to
14 Paul Farrell dated September 3rd, 2019; correct?

15 A. Correct.

16 Q. And the subject again is Cabell County Resiliency
17 (Abatement) Plan. Do you see that?

18 A. Yes.

19 Q. And the email says, "Paul, appreciate the time you took
20 to review the Resiliency (Abatement) Plan with me."

21 Did I read that correctly?

22 A. You did.

23 Q. And then it talks about some changes that were made in
24 the plan as a result of that meeting.

25 The next sentence says, "After speaking with you, I

1 felt we needed to add some emphasis to the issue with
2 respect to infants and children for both immediate needs and
3 long-term (multi-generational) needs. There is a new
4 section added to the lists (first rectangle) on pages 15 and
5 22 and a description for each of these on the following
6 pages (16 and 23)."

7 Do you see that?

8 **A.** Yes.

9 **Q.** My question, Dr. O'Connell, is whether you recall that
10 those changes were made to the Resiliency Plan as a result
11 of Dr. Petrany's meeting with Mr. Farrell?

12 **A.** I believe Dr. Petrany said these have been integrated
13 into other sections and do not change the plan, but the
14 additions added emphasis.

15 So I recall moving components over time. We moved
16 multiple sections to highlight a need or a population to
17 another section.

18 **Q.** In particular, Dr. O'Connell, the -- I guess the second
19 sentence there in that paragraph that I read said there is a
20 new section added. So that does refer to a change; correct?

21 **A.** And then he said these had already been integrated into
22 other sections and do not change the plan, but the additions
23 provided some emphasis that seemed important.

24 So I believe -- I don't recall all the iterations to
25 the draft, as there were countless iterations. So as we

1 moved, there were many times that we moved, added,
2 integrated, changed -- the little bubbles that were on the
3 slide earlier weren't in quite a few versions of the draft
4 and, so, we summarized them. So --

5 **Q.** And my question, Doctor, is whether you recall that the
6 new section that's referred to here was added as a result of
7 Dr. Petrany's meeting with Mr. Farrell.

8 **A.** I don't know. I was not in -- I don't know if I was in
9 attendance at that meeting.

10 **Q.** And I just want to make sure we're communicating with
11 each other. Setting aside whether you were at the meeting,
12 do you recall that the new section that's referred to here
13 was added as a result of that meeting?

14 **A.** I cannot say that I recall that at one time we moved
15 something on this date. I, I truly don't remember if there
16 was a section moved or added at any particular time.

17 **Q.** Okay. Again, I, I apologize. Let me try to ask a
18 better question. I'm not asking about the date or the time.

19 My question is do you recall that the section that is
20 referred to here -- strike that. Do you recall a section or
21 language being added to the plan as a result of a meeting
22 between Dr. Petrany and Mr. Farrell?

23 **A.** I recall countless changes to the plan. I cannot say
24 what necessarily necessitated any of those changes with all
25 certainty.

1 **Q.** Okay. And I hate to belabor this. My question is a
2 simple one. Do you recall any section of the plan being
3 added as a result of the meeting with Mr. Farrell?

4 MS. QUEZON: Judge, I think she's answered that a
5 few times now. She doesn't recall.

6 MR. RUBY: Judge, with respect, I don't think --

7 THE COURT: I'm going to sustain the objection,
8 Mr. Ruby. You can move on.

9 BY MR. RUBY:

10 **Q.** Doctor, do you see the paragraph after the one
11 we've been looking at?

12 **A.** I do.

13 **Q.** It says, "Todd Davies has been able to collect --" and
14 we talked about Todd Davies; correct?

15 **A.** Yes.

16 **Q.** He's a Professor at Marshall?

17 **A.** He is the Associate Director of Research for the
18 Division of Addiction Sciences.

19 **Q.** "Todd Davies has been able to collect some of the data
20 you thought important, including ODs and OD deaths in the
21 county and NAS babies at Cabell Huntington Hospital's
22 special unit." Do you see that?

23 **A.** I do.

24 **Q.** And my question here is a similar one, which is whether
25 you were aware that Dr. Davis was collecting data that Mr.

1 Farrell thought important to include in this plan?

2 **A.** I cannot speak to Dr. Davies's work.

3 **Q.** And then at the end, the last sentence there, it says,
4 "I have not heard from Amy Quezon." Correct?

5 **A.** Correct.

6 **Q.** And Ms. Quezon, of course, is one the counsel for the
7 plaintiffs; correct?

8 **A.** She is.

9 **Q.** Let's look at the version of the plan that was attached
10 to this email. And this is marked Defendants' West Virginia
11 1447.

12 Doctor, do you recognize this, Defendants' 1447, as
13 another version of the Resiliency Plan?

14 **A.** One of many.

15 **Q.** And this one is dated September 3rd, 2019; correct?

16 **A.** That it is.

17 **Q.** And I'll represent to you, I think I already did, that
18 this was attached to the email that we were just looking at
19 from Dr. Petrany to Mr. Farrell. And you can probably guess
20 what page I'm going to ask you to look at.

21 **A.** Are we going to the money?

22 **Q.** 29. Are you there, Doctor?

23 **A.** I am.

24 **Q.** This is the Allocation of Funds page. Do you see that?

25 **A.** I do.

1 Q. And this is the version that existed, according to the
2 data on the document, as of the date that Dr. Petrany sent
3 his email about changes back to Mr. Farrell; correct?

4 A. You indicated that this was the document attached to
5 the email that we were just looking at?

6 Q. And the date on that email was September the 3rd;
7 correct?

8 A. Correct.

9 Q. And the date on this version of the Resiliency Plan is
10 September the 3rd; correct?

11 A. Correct.

12 Q. And the email from Dr. Petrany to Mr. Farrell indicated
13 that he and Mr. Farrell had discussed the plan prior to
14 September the 3rd; is that right?

15 A. Correct.

16 Q. Let's look at the line for treatment, Outpatient and
17 Inpatient/Residential Services. Do you see that, Doctor?

18 A. I do.

19 Q. And the dollar figure there is still 50 million; is
20 that correct?

21 A. It is.

22 Q. And then there's a total number. I think this is a
23 little bit of a difference from the previous version.

24 There's a total number on this document; correct?

25 A. Correct.

1 Q. And the total is \$537 million. Do you see that?

2 A. I do.

3 Q. And it has the same note at the bottom that we saw in
4 the previous August 22nd version of the Resiliency Plan.

5 "Each figure includes funding for the essential long-term
6 (multi-generational) sustainability of all areas listed."

7 Correct?

8 A. Yes.

9 Q. The 537 million-dollar figure, that, that includes
10 \$175 million for the institute that was going to be built at
11 Marshall; is that right?

12 A. Yes.

13 Q. That was significantly lower than the 365
14 million-dollar figure for the institute that we saw in the
15 August 22nd version of the plan; correct?

16 A. Yes, it is.

17 Q. And why was the money -- why was that dollar figure
18 lowered?

19 A. I don't know.

20 Q. Was it, was it the case that there was push-back about
21 the perceived amount of money that would be allocated to
22 Marshall Health?

23 A. I believe -- are you referencing a question from my
24 deposition?

25 Q. Good guess.

1 **A.** Can I have the context for that question?

2 **Q.** Sure.

3 MR. RUBY: Mr. Simmons, could we have 233, please?

4 THE WITNESS: Yes. So this would indicate --
5 thanks for jogging my memory. This would indicate that we
6 had a community meeting or the advisory group had probably
7 met to discuss some of this at the time.

8 MR. RUBY: We'll go back to the Allocation of
9 Funds page, Mr. Simmons.

10 BY MR. RUBY:

11 **Q.** There is in this version, the September 3rd
12 version, that followed the discussion between
13 Dr. Petrany and Mr. Farrell, there's still \$60 million
14 for the category that includes building housing and a
15 transportation network and so on, right, the community
16 health and social supports?

17 **A.** There is.

18 **Q.** And there's now \$75 million toward the big research
19 project on data; correct?

20 **A.** You said there's now. There was in the prior.

21 **Q.** You're right. And there's -- I don't think we focused
22 on that in the prior version. But in the August 19th
23 version, the first version we looked at, it was a lower
24 number; correct?

25 **A.** I believe on all funds it was lower.

1 **Q.** And in this multi-generational version that we have
2 here, the number for data and research is \$75 million;
3 right?

4 **A.** It appears to be.

5 **Q.** And then the number for the economic development
6 category, the one that involves investing money in local
7 businesses, that one is now \$100 million in this version;
8 correct?

9 **A.** Uh-huh.

10 **Q.** So the total is \$537 million. The month after this
11 email, Mr. Farrell announced to the media that he was going
12 to seek \$500 million in this case; is that right?

13 **A.** I don't know.

14 MS. QUEZON: Objection, hearsay.

15 THE COURT: Overruled. It's not for the truth of
16 the matter, but if it was said --

17 Do you know whether he said that or not?

18 THE WITNESS: I know there was -- at one point,
19 there was a large declaration made by Paul Farrell to the
20 media. I don't know the amount that was declared on that
21 date.

22 THE COURT: Okay. I'll sustain the objection.

23 BY MR. RUBY:

24 **Q.** Do you recall that you've previously seen an
25 article in which Paul Farrell says he's going to want

1 \$500 million from the defendants in this lawsuit?

2 MS. QUEZON: Same objection.

3 THE COURT: Sustained.

4 MR. RUBY: Let me ask you, Mr. Simmons, to pull up
5 Page 213 in Dr. O'Connell's transcript.

6 I'll direct you to line 16, Dr. O'Connell.

7 MS. QUEZON: Judge, I'm objecting to this. He
8 showed her an article in the deposition which was rank
9 hearsay and asked her about it. You can't make it not
10 hearsay by showing something in a deposition.

11 MR. RUBY: Your Honor, the question is whether the
12 witness is aware that Mr. Farrell said to the media that he
13 was going to seek \$500 million --

14 THE COURT: You've already been through that and
15 I've sustained the objection to it. Let's move on to some
16 other point.

17 BY MR. RUBY:

18 **Q.** Dr. O'Connell, in December of 2019 Mr. Farrell told
19 Dr. Petrany that he was ready for the Resiliency Plan to
20 be released to the public; correct?

21 MS. QUEZON: Objection, hearsay.

22 THE COURT: Just a minute.

23 THE WITNESS: I don't know.

24 THE COURT: Just a minute.

25 How is that not -- how is that admissible, Mr. Ruby?

1 MR. RUBY: The witness, the witness has seen the
2 correspondence.

3 THE COURT: You're cross-examining her and I think
4 it's a proper basis for cross.

5 You can answer it if you can, Dr. O'Connell.

6 MS. QUEZON: Your Honor, may I be heard briefly?

7 THE COURT: Pardon me?

8 MS. QUEZON: May I be heard briefly?

9 THE COURT: Yes, you may.

10 MS. QUEZON: Thank you, Your Honor.

11 What, what's happening is that in her deposition
12 defense counsel showed her a number of documents. So now
13 she's seen them. She didn't have prior knowledge of them.
14 They used them to cross her in her depo and now they want to
15 talk to her about it on the stand, but it's still hearsay.

16 MR. RUBY: Judge, I think I can short-circuit
17 this.

18 The witness is on the document where this communication
19 was made, so we'll just --

20 MS. QUEZON: If that's, if that's the case, then,
21 Your Honor, I'll wait and see what Mr. Ruby does.

22 THE COURT: Okay. See what you can do, Mr. Ruby.

23 BY MR. RUBY:

24 Q. Dr. O'Connell, I'm going to show you now what's
25 been marked as Defendants' West Virginia 1432.

1 Dr. O'Connell, do you recognize this as a
2 December 18th, 2019, email from Dr. Petrany to Paul Farrell
3 on which you were included on the cc line?

4 **A.** My email doesn't actually appear. It's just my name.

5 **Q.** But you are on the cc line of the email; correct?

6 **A.** My name is, but my email does not appear.

7 **Q.** I don't know that we need to get into a debate about
8 how the Marshall Health email system works or what it
9 displays on the --

10 **A.** It appeared on the other one. I'm noting that. I find
11 it interesting.

12 **Q.** Well, let me, let me -- if we need to do this, let me
13 direct you to the "from" line. It's from Dr. Petrany who's
14 also in the Marshall University computer system. Do you see
15 that?

16 **A.** Yes.

17 **Q.** And his email doesn't appear either; right?

18 **A.** No.

19 **Q.** It has a line, a different line than the email address
20 which reflects his status in the Marshall University email
21 system; correct?

22 **A.** Uh-huh.

23 **Q.** And after your name is a similar line that reflects
24 that you are in the Marshall University email system;
25 correct?

1 **A.** I guess so. I've never seen that before.

2 **Q.** And the, the subject line of the email is Cabell County
3 Resiliency (Abatement) Plan. Do you see that?

4 **A.** Yes.

5 **Q.** And on the attachment line it says "Huntington
6 Resiliency Plan Final September 3 FINAL.pdf."

7 Do you see that?

8 **A.** I do.

9 **Q.** There's another email -- this is a two email chain and
10 there's another email at the bottom of it that was forwarded
11 to you in the top email from Dr. Petrany. Do you see that?

12 **A.** Say that again.

13 **Q.** Do you see the email at the bottom of the chain here?

14 **A.** Yes.

15 **Q.** And that was included in the email that Dr. Petrany
16 copied you on at the time; correct?

17 **A.** I assume so.

18 **Q.** And --

19 **A.** That part is embedded in the prior email?

20 **Q.** Yes.

21 **A.** Okay.

22 **Q.** And the, the email on the bottom that you received when
23 Dr. Petrany replied is from, from Paul Farrell; correct?

24 **A.** It is.

25 **Q.** It's dated December 17th, 2019; correct?

1 **A.** It is.

2 **Q.** And it's to Dr. Petrany; correct?

3 **A.** Yes.

4 **Q.** And copied to Ms. Quezon?

5 **A.** Yes.

6 **Q.** Ms. Kearse?

7 **A.** Yes.

8 **Q.** To Ann Ritter at Ms. Kearse's law firm; correct?

9 **A.** Yes.

10 **Q.** And then to Erin Dickinson. Do you know who Erin
11 Dickinson is?

12 **A.** I do not.

13 **Q.** And it says in the body of the email, "Dr. Petrany,
14 circling back to you. Gonna disclose the Resiliency Plan
15 and ready for you to release to the public."

16 Do you see that?

17 **A.** I do.

18 **Q.** And, so, my question is, is it correct to say that in
19 December of 2019 Mr. Farrell told Dr. Petrany that he was
20 ready for the Resiliency Plan to be released to the public?

21 **A.** In December of 2019 it is correct to say that -- only
22 what I know in this email. We're going to disclose the plan
23 and ready for you to release to public.

24 MR. RUBY: Your Honor, I'd move to admit
25 Defendants' 1432.

1 MS. QUEZON: No objection, Your Honor.

2 THE COURT: It's admitted.

3 BY MR. RUBY:

4 Q. And after that email from Mr. Farrell, Doctor, the
5 Resiliency Plan was, in fact, released to the public;
6 correct?

7 A. Yes.

8 Q. I will show you what's been marked as Defendants' West
9 Virginia 1361.

10 MR. HESTER: Your Honor, may I have just a moment
11 to consult with Mr. Ruby?

12 THE COURT: Yes, you may.

13 (Pause)

14 MR. RUBY: Judge, Mr. Hester reminded me that I
15 have failed to move in Defendant's 1447 which is the
16 September 3rd version of the, of the Resiliency Plan that
17 was sent to Mr. Farrell.

18 And I would move that one in for all purposes on two
19 bases, both under Rule 801(d)(2), number one, that, that
20 given the correspondence between plaintiffs' counsel,
21 there -- the response from Mr. Farrell to Marshall that this
22 version of the plan was, was adopted by the -- by a party,
23 and in particular given Mr. Farrell's subsequent
24 announcement to the public.

25 And the second basis, Your Honor, is that given the

1 sequence of events that's emerged from the witness's
2 testimony, it is clear that for purposes of the development
3 of the Resiliency Plan, and -- that Marshall and the folks
4 at Marshall, including Dr. O'Connell and Dr. Petrany who
5 were working on the plan were serving as agents of
6 plaintiffs in preparing this abatement plan to be used in
7 the litigation.

8 MS. QUEZON: I certainly object to that. I'm not
9 even sure what you're trying to move in. But the -- her
10 testimony has been clear, Your Honor.

11 Are you just trying to move in -- which date of the
12 Resiliency Plan?

13 MR. RUBY: This is the September 3rd version and
14 it's marked Defendants' 1447.

15 MS. QUEZON: Judge, I have no objection to the
16 limited purpose that, that you had discussed earlier
17 regarding the abatement numbers.

18 THE COURT: Well, he offered it for all purposes.
19 So you're trying to get around the hearsay objection,
20 aren't you, Mr. Ruby?

21 MR. RUBY: Correct, Your Honor. And this is a
22 version of the plan that given the correspondence between
23 plaintiffs' counsel and Dr. Petrany was, was adopted by a
24 party.

25 And it's also clear, again, that given the, given the

1 evidence and the testimony that we've seen so far about the
2 role of plaintiffs' counsel in the development --

3 THE COURT: You're saying it's not hearsay because
4 it comes -- it's excluded from hearsay under Rule 801(d)(2)?

5 MR. RUBY: Yes, Your Honor.

6 MS. QUEZON: Your Honor, just so we're clear, this
7 is not the Resiliency Plan that was released to the public.
8 This was still a draft of the Resiliency Plan. It was not
9 formally adopted by either, either plaintiff.

10 So for the limited purpose that you've allowed the
11 other Resiliency Plans in, I certainly, you know, would
12 assume that your ruling is going to be consistent.

13 But this was not the final draft. The final draft is,
14 as Dr. O'Connell has already testified, had no numbers in it
15 whatsoever.

16 So for the limited purposes the Court has allowed these
17 to come in, I assume you'll be consistent in that ruling.
18 But for any other matter, Your Honor, this again was simply
19 a draft that was not the final product released to the
20 public.

21 MR. RUBY: That doesn't resolve the agency issue,
22 Your Honor. It's still -- the evidence to this point has
23 been that the --

24 THE COURT: Let me hear from your colleague over
25 here, Mr. Ruby.

1 MR. RUBY: Yes, Your Honor.

2 MR. HESTER: Yes, Your Honor.

3 I just wanted to reinforce Mr. Ruby's point under Rule
4 801(d)(2)(B). Statement is offered against an opposing
5 party and is one the party manifested that it adopted and
6 believed to be true.

7 Mr. Farrell is stating to Dr. Petrany that he's going
8 to release this plan to the public. I think that falls
9 within that hearsay exception.

10 MR. ACKERMAN: Your Honor, there hasn't been any
11 evidence that Mr. Farrell adopted everything in a draft plan
12 based on a set of -- a single email that you -- that this
13 witness had no knowledge of.

14 I think defense is overreaching here. This is a draft.
15 There can't be an argument that somehow Huntington or Cabell
16 adopted a draft when what was actually released by the
17 parties was a different document.

18 MR. RUBY: Your Honor, I'd return to the point
19 that Mr. Hester made is, and this is in 1432 which the Court
20 has in front of it, in which Mr. Farrell says, "Gonna
21 disclose the Resiliency Plan and ready for you to release to
22 the public."

23 MR. MAHADY: Your Honor, in addition to Mr.
24 Farrell, the witness has already testified, and it's stated
25 on the documents, that the plaintiff, Cabell County

1 Commission, is a contributing organization to the plan.
2 They're part of the plan, their statement.

3 MS. QUEZON: Judge, I'd point out, just for the
4 record, that the "gonna disclose," that's to the defendants.
5 The Resiliency Plan was going to be disclosed to the
6 defendants.

7 But the final product -- and they got every single
8 draft, clearly, of the Resiliency Plan prior to it being
9 disclosed to the public prior to the final version that
10 arguably could have been adopted by Cabell and the City of
11 Huntington. And that one didn't have any numbers in it
12 whatsoever.

13 MR. RUBY: Your Honor, with respect to Ms. Quezon,
14 we need to read the entire sentence. The sentence says,
15 "Gonna disclose the Resiliency Plan and ready for you to
16 release to the public." And this is the version that --

17 THE COURT: Rather than belabor this, I'm going to
18 overrule the objection and admit it. I think it's covered
19 by Rule 801 and it's admitted.

20 Now, what about the email? Did you move the email into
21 evidence?

22 MR. RUBY: There's the one, Judge, that you
23 overruled and I've lost track of where I am. I don't know
24 if we -- I had intended to move 1432 in and I don't know if
25 I did or not.

1 MR. HESTER: That was admitted without objection.

2 MS. QUEZON: Yes.

3 THE COURT: All right. Is that right?

4 MS. QUEZON: That's correct, Your Honor. That one
5 was admitted without objection.

6 THE COURT: All right, very good.

7 MR. RUBY: Judge, I think now we're on 1361.

8 MS. QUEZON: To which I do object in that
9 Ms. O'Connell -- Dr. O'Connell -- pardon me, Doctor -- is
10 not on this email. At this point, I would -- the Court may
11 want him -- permit him to ask some questions about it, but I
12 would object to it.

13 MR. RUBY: We'll lay the foundation, Your Honor.

14 THE COURT: Okay. Go ahead.

15 BY MR. RUBY:

16 **Q.** Dr. O'Connell, do you have Defendants' 1361 in
17 front of you?

18 **A.** I do.

19 **Q.** And I'm going to first -- I'm going to first direct
20 you, Dr. O'Connell, to the, the email at the bottom of this
21 chain. This is an email from Dr. Petrany dated Monday,
22 February 3rd, 2020. And it says "Resiliency Plan Public
23 Release" on the subject line. Do you see that?

24 **A.** I do.

25 **Q.** And the recipients -- the group of recipients on this

1 email are undisclosed in the email itself; correct?

2 **A.** I believe so.

3 **Q.** Do you recall receiving this email?

4 **A.** Do you have context from my deposition?

5 **Q.** I do. Would you like to see that before you answer the
6 question?

7 **A.** It would be helpful.

8 MR. RUBY: Mr. Simmons, 251, please.

9 BY MR. RUBY:

10 **Q.** And I'll direct you to line 14, Doctor.

11 **A.** I believe so.

12 **Q.** All right.

13 THE COURT: Do you believe so now?

14 THE WITNESS: I do.

15 BY MR. RUBY:

16 **Q.** Thank you, Dr. O'Connell.

17 MS. QUEZON: Your Honor, again I'm going to renew
18 my objection. Simply -- she did receive the bottom email
19 and she did testify to that in deposition and in -- and
20 today. But the email above that on which she is not a
21 recipient is the portion that I object to as hearsay.

22 MR. RUBY: And, Your Honor, I would move in -- you
23 can see that there is an email at the top about which I may
24 ask the witness a couple of questions.

25 What I would move in, if we can do this, or move in for

1 the Court's consideration is the bottom portion of the
2 email, the email from Dr. Petrany.

3 And I'm certainly happy for the Court to rule that it
4 would not consider the top portion of the email for the
5 truth of the matter asserted.

6 THE COURT: What about that?

7 MS. QUEZON: I don't know how we do this without
8 redacting or not considering at all the top portion. I
9 mean, certainly he can ask some questions to her but --

10 THE COURT: Well, I'm going to sustain objection
11 to the admission of the document to move this along.

12 You can question her about it, Mr. Ruby, but I'm not
13 going to admit the document. I think there are hearsay
14 problems with it. But it does, in my view, provide a good
15 faith basis for you to question her. So go ahead.

16 MR. RUBY: Judge, consistent with the practice
17 we've used in the past with these sort of split documents,
18 would we be able to do what plaintiffs have done and prepare
19 a redacted version for admission?

20 THE COURT: So you want to redact the top email
21 and admit the bottom one?

22 MR. RUBY: Yes, Your Honor.

23 THE COURT: How is the bottom one admissible
24 through this witness?

25 MR. RUBY: The witness just testified after

1 looking at her deposition transcript that she believes she
2 has received this document. She was on the list of people
3 --

4 THE COURT: That doesn't get you around the
5 hearsay problem, does it? Maybe I better hear from, from
6 your opponent.

7 MS. QUEZON: Your Honor, it -- the bottom portion,
8 although I agree with the Court that it doesn't really get
9 you around the hearsay objection, I have no, I have no issue
10 with the bottom portion of it and she did receive it. So
11 if -- I'll leave it to the Court's discretion as to whether
12 you want him to go through the redaction process.

13 THE COURT: Well, this is a bench trial. Will you
14 be satisfied if I say I'm just not going to consider the top
15 part?

16 MS. QUEZON: Yes, sir, I will.

17 THE COURT: Okay. Well, that solves that problem.
18 And the bottom part is admitted, there being no objection to
19 that. Did I get that right?

20 MS. QUEZON: Yes, sir.

21 THE COURT: Okay.

22 MR. RUBY: Thank you, Your Honor.

23 BY MR. RUBY:

24 Q. Dr. O'Connell, here in the bottom part of the email
25 chain we have an email from Dr. Petrany again to an

1 undisclosed recipient list. And the subject is
2 "Resiliency Plan Public Release." Right?

3 **A.** Yes, it is.

4 **Q.** And Dr. Petrany begins, "I am writing to you as an
5 active participate in the community group that developed the
6 attached Resiliency Plan for addressing the substance use
7 disorder crisis that has affected our county and city."

8 Do you see that?

9 **A.** Yes.

10 **Q.** Do you recall that Dr. Petrany sent this email to the
11 entire group of people who had worked on the Resiliency
12 Plan?

13 **A.** I do not know who's on the redacted list.

14 **Q.** It says -- if you would look at the -- skip a sentence.
15 There's a sentence that begins, "We have been encouraged."
16 Do you see that?

17 **A.** Yes.

18 **Q.** It says, "We have been encouraged to make that plan
19 public and I am writing to inform you of our intention to do
20 so later this week."

21 Did I read that correctly?

22 **A.** Yes.

23 **Q.** And this came after the email that Mr. Farrell had sent
24 to Dr. Petrany in which he said, "Gonna disclose the
25 Resiliency Plan and ready for you to release to the public."

1 Correct?

2 **A.** Yes.

3 **Q.** A few sentences down, Dr. O'Connell, there's a sentence
4 that begins -- the beginning of it is almost all the way
5 over to the right-hand side. It says, "It was recommended."
6 Do you see that?

7 **A.** I do.

8 **Q.** And that sentence says, "It was recommended that any
9 reference to a specific budget for the plan be removed from
10 the document to be released." Do you see that?

11 **A.** I do.

12 **Q.** And in this version of the plan that was released to
13 the public, as you've already testified, the Allocation of
14 Funds page that we've looked at a number of times was cut;
15 correct?

16 **A.** It was removed.

17 **Q.** Now, let's orient this in time. The version from
18 August the 19th, the version of the Resiliency Plan from
19 August the 19th of 2019 had shown \$23 million for addiction
20 treatment; correct?

21 **A.** The last plan we looked at was September 3rd.

22 **Q.** The first version that we looked at was August the
23 13th. And I don't mean to test your memory.

24 **A.** You want the one that's been photocopied, that one?

25 **Q.** Pardon me?

1 **A.** The one that's been photocopied?

2 **Q.** The one that is Defendants' West Virginia 929.

3 **A.** Yes.

4 **Q.** In that version from August the 19th the number that
5 was shown for addiction treatment was \$23 million; correct?

6 **A.** Outpatient and Inpatient/Residential Services?

7 **Q.** Yes.

8 **A.** Yes.

9 **Q.** And in the version, then, from August 20th, the 40-year
10 version, that number changed to \$50 million over 40 years;
11 correct?

12 **A.** Is that 1457?

13 **Q.** I believe so, yes.

14 **A.** And Outpatient and Inpatient/Residential Services
15 changed to \$50 million.

16 **Q.** Over 40 years?

17 **A.** Yes, over 40 -- four decades.

18 **Q.** Four decades?

19 **A.** Four decades.

20 **Q.** 40 years?

21 **A.** 40 years.

22 **Q.** And then the version of the Resiliency Plan from
23 September the 3rd after Mr. Farrell had, had reviewed the
24 plan with Dr. Petrany, that one -- and that's the one that
25 we looked at most recently -- that still showed \$50 million

1 for addiction treatment over a, quote, multi-generational
2 time period. Correct?

3 **A.** The August 22nd plan showed Outpatient and
4 Inpatient/Residential Services at \$50 million for, asterisk,
5 long-term multi-generational.

6 **Q.** And, Doctor, the one that I was just referring to -- I
7 should have been clearer. There's so many versions of this
8 floating around. The one that I was just referring to was
9 the September 3rd version.

10 **A.** Your 1447?

11 **Q.** It was 1447.

12 **A.** Right. It shows Outpatient and Inpatient/Residential
13 Services at \$50 million.

14 **Q.** And that was for a time period that the plan described
15 as multi-generational; is that right?

16 **A.** It is.

17 **Q.** And then in the version that was ultimately released in
18 February of 2020, the budget, the Allocation of Funds paid
19 was deleted; correct?

20 **A.** It was removed from the plan.

21 **Q.** Let's talk about what happened between September of
22 2019 and February of 2020.

23 Did you know that between September of 2019, the
24 version with the \$50 million treatment budget, and
25 February of 2020 when that budget was deleted that this case

1 was sent back to this court for trial?

2 **A.** I don't.

3 MS. QUEZON: Objection, relevance.

4 THE COURT: Overruled. I'll let you proceed. I
5 don't know where you're going with this, but I want to see.
6 So I'll overrule the objection.

7 BY MR. RUBY:

8 **Q.** Did you know, Dr. O'Connell, that now instead of
9 the \$50 million that local experts in Cabell County said
10 was needed for addiction treatment over 40 years, now
11 the plaintiffs are asking for \$1.6 billion for addiction
12 treatment over just 15 years?

13 **A.** I do not know what's being asked.

14 **Q.** You've testified earlier that you thought that one of
15 the reasons that the budget, the Allocation of Funds page
16 was deleted from the Resiliency Plan was because no health
17 economist had been involved in the process. Is that right?

18 **A.** As I stated before, I believe the Allocation of Funds
19 page was removed as I had started it in the same way that I
20 had said over Project Hope; that we had \$2.1 million in
21 residential treatment times 17 people times five years times
22 40 years gave items that I would not be able to defend in a
23 court of law. And, therefore, it was removed as we did not
24 have the expertise to make that decision.

25 THE COURT: And that's what you testified to a

1 while ago, wasn't it?

2 THE WITNESS: Yes.

3 BY MR. RUBY:

4 Q. And you testified about the, the role of the health
5 economist, though; correct?

6 A. I stated, for example, that I have no health economist
7 training.

8 Q. And did you think that it was important for someone
9 with health economist training to be involved in the
10 budgeting for the Resiliency Plan?

11 A. I would assume in the same way that I would want an
12 oncologist to consult on cancer, I'd want an expert in
13 health and policy to -- someone with an economy knowledge to
14 consult on financial planning for a healthcare plan.

15 Q. And the person who put together the plaintiffs' current
16 budget for their abatement plan, did you know that that
17 person's specialty is estimating lost wages in personal
18 injury cases?

19 A. I did not.

20 MR. RUBY: I'll pass the witness, Your Honor.

21 THE COURT: All right.

22 How much do you expect to have, Mr. Mahady?

23 MR. MAHADY: I'm going to take you to break, Your
24 Honor, I think. I might get done a little bit earlier.

25 THE COURT: Can you do it in a half hour?

1 MR. MAHADY: I can do mine in a half hour. I
2 don't think Mr. Hester can.

3 THE COURT: I hate to pull the plug in the middle
4 of your cross. On the other hand, I promised everybody we
5 would quit at noon, including my wife.

6 (Laughter)

7 MR. MAHADY: I promised mine as well, so I don't
8 want --

9 THE COURT: We'll see how far we can go.

10 MR. MAHADY: All right. I'll go as fast as I can
11 here.

12 Good morning, Your Honor.

13 CROSS EXAMINATION

14 BY MR. MAHADY:

15 Q. Good morning, Dr. O'Connell. We have met before
16 via Zoom. I don't really count that. So nice to meet
17 you in person.

18 A. I thought you looked familiar.

19 Q. Dr. O'Connell, I believe you testified yesterday that
20 in your role, you conducted extensive evaluation on the
21 opioid epidemic for projects in Cabell; correct?

22 A. I reported that I had -- that as part of our grants, we
23 have an evaluation component required for each.

24 Q. Okay. But you said you personally have conducted
25 extensive evaluation; correct?

1 **A.** I assume you're quoting my testimony from yesterday.

2 **Q.** I'm trying to. I don't know if I'm doing it right. Do
3 you have extensive evaluation -- extensive experience
4 evaluating the opioid epidemic?

5 **A.** I have evaluation experience of our projected and
6 federal funding.

7 **Q.** Okay. And as part of your extensive evaluation, you
8 have looked into understanding the opioid epidemic; correct?

9 **A.** Can you clarify the question?

10 **Q.** You've given presentations on understanding the opioid
11 epidemic; correct?

12 **A.** Yes.

13 **Q.** Okay. And as part of those presentations, you have
14 noted the high prescribing rates in West Virginia for
15 opioids and benzodiazepines; correct?

16 **A.** Do you have a specific presentation that you're
17 referencing?

18 **Q.** I am, but I'm asking you specifically right now, but I
19 will show you the presentation. But you have noted as part
20 of your presentations understanding the opioid epidemic the
21 high rate of prescribing in West Virginia for prescription
22 opioids; correct?

23 **A.** I believe so.

24 **Q.** And you've also noted the high rate of prescribing for
25 benzodiazepines; correct?

1 **A.** I believe so.

2 **Q.** And you have stated, or made the conclusion that those
3 high prescribing rates were a leading contributor to the
4 opioid epidemic; right?

5 **A.** I believe I state them as a factor.

6 **Q.** You've actually identified them as a leading
7 contributor; correct?

8 **A.** Correct.

9 **Q.** They are a leading contributor in the opioid epidemic
10 in West Virginia; correct?

11 **A.** If I have stated that in a presentation, would you be
12 willing to show it?

13 **Q.** I'm just asking you -- I will show you the presentation
14 and I will show you your speaker notes. Let's just do that.
15 I'm not trying to play games here.

16 **A.** Okay.

17 MR. MAHADY: Your Honor, may I approach?

18 THE COURT: Yes, you may.

19 BY MR. MAHADY:

20 **Q.** Dr. O'Connell, what I'm handing you is a color
21 version of a presentation and the presentation with
22 speaker notes.

23 **A.** Okay.

24 **Q.** That one is a little hard to follow, but you'll be able
25 to see the speaker notes.

1 **A.** Okay.

2 MR. MAHADY: Your Honor, are you okay with me
3 publishing it? I'm not going to seek to get this document
4 admitted. It's more of a demonstrative.

5 THE COURT: Yes.

6 MR. MAHADY: Sir, can you please pull up the
7 presentation that has the speaker notes and we'll look at
8 the page ending in 55092.

9 BY MR. MAHADY:

10 **Q.** Dr. O'Connell, before we go to that page, do you
11 recognize this presentation?

12 **A.** It's been a while.

13 **Q.** Okay. But do you recognize this presentation?

14 **A.** Yes, I believe so.

15 **Q.** And that's your name, Lyn O'Connell, MA IMFT; correct?

16 **A.** That shows you how long ago it is, yes.

17 **Q.** Okay. And this is around 2017, 2018?

18 **A.** Maybe 2016, 2017.

19 **Q.** Okay. And you gave this -- you prepared this
20 presentation; correct?

21 **A.** I did. It's one of the variations of the SBIRT
22 training.

23 **Q.** Okay. If you can turn to the page ending at the bottom
24 5092, the slide is "Prescription Drug Abuse."

25 And I'm really going to focus on two of the bullets and

1 then the speaker notes. I'm not going to focus on the right
2 side of the presentation. Okay.

3 Dr. O'Connell, can you please read the two bullets that
4 are being highlighted?

5 **A.** "West Virginia has the highest prescribing rate for
6 benzos, 71.9 out of 100 persons."

7 "West Virginia has the third highest prescribing rate
8 for opioid pain relievers, 137.6 out of 100 persons."

9 **Q.** Okay. And the speaker notes to the slide, did you
10 prepare those speaker notes?

11 **A.** I don't mean this to sound flip. I don't use speaker
12 notes when I present. So it has to have been if I was
13 preparing for someone else to use the presentation or it was
14 added for one of our GAs.

15 **Q.** Okay. But if we can look at the speaker notes and I
16 want to focus on the sentence right here. Can you please
17 read the sentence starting "West Virginia has one of"?

18 **A.** "West Virginia has one of the highest opioid and
19 benzodiazepine prescribing rates in the country, which is a
20 leading contributor to the opioid epidemic and unlikely to
21 be explained by differences in the health status of the
22 population alone."

23 **Q.** Okay.

24 **A.** "West Virginia --"

25 **Q.** I'm sorry. Do you agree that the high prescribing

1 rates in West Virginia is a leading contributor to the
2 opioid epidemic as set forth in your presentation?

3 **A.** I believe these speaker notes are pulled from the
4 citation that is at the bottom.

5 **Q.** Okay.

6 **A.** So I believe I've copied in from there as context to
7 any questions that would come up above.

8 **Q.** You gave this presentation; correct?

9 **A.** Yes.

10 **Q.** You featured the high prescribing rates in West
11 Virginia; correct?

12 **A.** As one of the factors.

13 **Q.** Okay. And as the author of this presentation, do you
14 agree that high prescribing rates were a leading contributor
15 to the opioid epidemic?

16 **A.** The part of the presentation that I would state is that
17 West Virginia has the highest prescribing rates for benzos
18 and West Virginia has the third highest prescribing rates
19 for opioid pain relievers.

20 **Q.** Okay. And they contributed to the opioid epidemic;
21 correct?

22 **A.** I, I stand with West Virginia has the highest
23 prescribing rates for benzos and the third highest
24 prescribing rates for opioid pain relievers, and that
25 prescription drug abuse was one of the factors for the

1 opioid epidemic as this is a series of factors I go through,
2 adverse experiences.

3 **Q.** Okay. And we will look at that. But at least the
4 presentation says it was a, quote, leading contributor to
5 the opioid epidemic; correct?

6 **A.** The speaker notes that are copied out of wvha.org do
7 state that.

8 **Q.** Okay. I want to turn back to the color version of
9 this.

10 And if we could pull up the slide that ends in 1537.
11 And it's the wheel.

12 Okay. This was a slide from your presentation;
13 correct?

14 **A.** Yes.

15 **Q.** It was not speaker notes; correct?

16 **A.** Correct.

17 **Q.** Now, if we look at the box it says, "Multiple factors
18 have played a role in the development of the substance abuse
19 epidemic." Correct?

20 **A.** Correct.

21 **Q.** Okay. Can you start at the top, "pain scale," and just
22 read the factors that have played a role in the substance
23 abuse epidemic according to your slide?

24 **A.** Pain scale, Oxycontin, marketing, lack of behavioral
25 healthcare, lack of integrated care, healthcare professional

1 education.

2 **Q.** Okay. There's no bubble for wholesale distributors;
3 correct?

4 **A.** There is not.

5 **Q.** There's no reference to AmerisourceBergen on that
6 slide; correct?

7 **A.** There is not.

8 **Q.** There's no reference to Cardinal Health?

9 **A.** There is not.

10 **Q.** And there's no reference to McKesson Corporation;
11 correct?

12 **A.** There is not.

13 **Q.** Okay. Dr. O'Connell, do you have this document that I
14 believe Mr. Ruby used? It's a one-page email that ends in
15 0078, subject line, Comprehensive Plan to Address the Impact
16 of the Opioid Crisis.

17 **A.** Yes.

18 **Q.** All right. Before we move on, pain scale, that refers
19 to pain as the fifth vital sign; correct?

20 **A.** Yes.

21 **Q.** Okay. Do you have this email in front of you? It's
22 dated March 5, 2019; correct?

23 **A.** Yes.

24 **Q.** Okay. And if I recall correctly, you testified that
25 this stems from the meeting that you had with various

1 community leaders, including Mr. Farrell, to develop a
2 comprehensive plan to address the opioid epidemic; correct?

3 **A.** Correct.

4 **Q.** Okay. And this was March 5th, 2019; correct?

5 **A.** Correct.

6 **Q.** Okay. Did you advise anyone at that meeting that
7 Marshall had already come up with a comprehensive plan to
8 address the opioid epidemic prior to the meeting?

9 **A.** No.

10 **Q.** Okay. Did you advise anyone at the meeting that
11 Marshall had already submitted a comprehensive plan to the
12 Merck Foundation?

13 **A.** No.

14 **Q.** Okay.

15 MR. MAHADY: Ms. Pierce, can you hand me that?

16 Your Honor, may I approach?

17 THE COURT: Yes.

18 MR. MAHADY: Okay. Could you pull up Defendant WV
19 00417?

20 MS. QUEZON: Can you lay some foundation for this
21 document before we start?

22 MR. MAHADY: Sure.

23 MS. QUEZON: Thank you.

24 BY MR. MAHADY:

25 **Q.** Dr. O'Connell, I believe you testified at your

1 deposition that you are very familiar with this
2 document; is that correct?

3 **A.** I am.

4 **Q.** Okay.

5 MS. QUEZON: What is it?

6 MR. MAHADY: Okay. I thought that was enough.

7 BY MR. MAHADY:

8 **Q.** Is this the grant application for the Merck
9 Foundation?

10 **A.** M-e-r-c-k, yes.

11 **Q.** Okay.

12 MR. MAHADY: Please pull it up.

13 BY MR. MAHADY:

14 **Q.** Okay. And before we turn to this document, I just
15 want to compare the subject line of the email with the
16 title of the grant application. So the subject line of
17 the email is "Comprehensive Plan to Address the Impact
18 of the Opioid Crisis." Correct?

19 **A.** Yes.

20 **Q.** And the subject line of the grant which pre- --
21 application which pre-dated the meeting with the community
22 leaders is "A Comprehensive Approach to the Opioid Epidemic
23 in the Great Rivers Region of West Virginia." Correct?

24 **A.** Correct.

25 **Q.** And the Great Rivers Region of West Virginia, that's

1 broader than just Cabell County; correct?

2 **A.** Correct.

3 **Q.** What does that include?

4 **A.** As we discussed yesterday, the Great Rivers Regional
5 System of Addiction Care was this one. And it was Cabell,
6 Kanawha, Jackson, and Putnam County.

7 **Q.** Thank you. If we can please go to Page 3, Section A,
8 Abstract -- Program Abstract/Summary.

9 Okay. Dr. O'Connell, will you please read the
10 highlighted text?

11 **A.** "This program will establish an innovative,
12 comprehensive approach to reduce overdoses and overdose
13 deaths, increase treatment and treatment retention, and
14 enhance public health education to save lives and improve
15 health outcomes."

16 **Q.** Okay. And the program that's being described, that's
17 the subject of the grant that Marshall was seeking to
18 obtain; correct?

19 **A.** Incorrect.

20 **Q.** Please explain.

21 **A.** As we went through in my deposition, I indicated that
22 the Great Rivers system and the system that we have --

23 First off, the way grants work -- and when you write an
24 application for a grant is to indicate we're doing all of
25 the things. If you give us money, we're going to implement

1 X, Y, and Z and then you sort of break that down.

2 For the Merck Foundation they wanted coordination
3 between systems and they approached us to explore that
4 opportunity. This was before I was the Director --
5 Associate Director of Addiction Sciences as Bob Hansen and
6 Deb Keyster (phonetic) are the authors on this grant.

7 This grant purely hired a project director and
8 prevention education coordinators to work across systems
9 that existed. So their goals were to reduce opioid overdose
10 deaths, increase access -- increased -- enhanced access to
11 care for hepatitis, and improve public health.

12 So what they do is convene a monthly meeting of all
13 parties who are working in that area to see how we can
14 promote cross collaboration to reduce overdose deaths,
15 improve access to treatment, and enhance education.

16 **Q.** Okay. Thank you. That was helpful.

17 And, so, what this plan was to do in part was to
18 leverage existing resources and programs in the community;
19 correct?

20 **A.** It was to bring together community partners.

21 **Q.** Okay. And you agree, though, that part of the plan,
22 right, was to establish an innovative comprehensive approach
23 to reduce overdose and overdose deaths; correct?

24 **A.** In the way that I just stated, yes.

25 **Q.** Okay. And if we go down and look at the purpose of

1 this program, it was to develop -- "This program will
2 leverage funding to establish a mechanization that will
3 enable full implementation and coordination of each of the
4 components of the Great Rivers Regional System for Addiction
5 Care." Correct?

6 **A.** Correct.

7 **Q.** And if we look at the program goals starting with B-2,
8 Program Goals and Objectives, the four goals of the
9 program -- and I'm going to simplify this given the time --
10 the first one was to reduce overdoses and overdose deaths.
11 Correct?

12 **A.** Yes.

13 **Q.** The second one was to increase the number of
14 individuals entering treatment and treatment retention.
15 Correct?

16 **A.** Yes.

17 **Q.** The third one was to increase the availability of
18 educational opportunities and resources. Correct?

19 **A.** Correct.

20 **Q.** And the fourth one was to conduct formal process and
21 outcome evaluation and dissemination of findings? Correct?

22 **A.** Correct.

23 **Q.** Okay. And if you can turn to Page 300.

24 **A.** I don't understand.

25 **Q.** I'm sorry.

1 MS. QUEZON: On the right-hand side.

2 BY MR. MAHADY:

3 Q. Bottom right. Thank you. Okay.

4 So another representation that Marshall made to Merck
5 was that this plan it was putting forward was sustainable;
6 correct?

7 A. All grants require a sustainability plan.

8 Q. Okay. And the representations that Marshall made for
9 this comprehensive plan was that this program will be
10 sustained through the on-going engagement of partners
11 representing key sectors and all system components across
12 the region. Correct?

13 A. Yes.

14 Q. And it further stated that in addition, with the advent
15 of the Medicaid SUD waiver, many of the services will be
16 reimbursed by Medicaid; correct?

17 A. That was written, yes.

18 Q. Okay. That was a representation that Marshall made to
19 Merck; correct?

20 A. When the grant was submitted, yes.

21 Q. Okay. We can go back to the first page just so we can
22 see the amount of funding requested for this comprehensive
23 approach to the opioid epidemic in the Great Rivers Region
24 of West Virginia.

25 Can you please read what the amount of funding

1 requested is.

2 **A.** \$1,999,206 was requested from the Merck Foundation.

3 **Q.** Okay. Marshall did not consult the plaintiffs' lawyers
4 with this request; correct?

5 **A.** This was submitted in 2017.

6 **Q.** Prior to the meeting with the plaintiffs' lawyers?

7 **A.** Significantly.

8 MS. QUEZON: Objection, Your Honor. This is
9 argumentative.

10 MR. MAHADY: Your Honor, the witness has talked at
11 length about -- I won't characterize her testimony. The
12 witness has testified about the involvement of plaintiffs'
13 lawyers.

14 THE COURT: I'll overrule the objection. Go
15 ahead, Mr. Mahady.

16 BY MR. MAHADY:

17 **Q.** This grant proposal for a comprehensive approach to
18 the opioid epidemic for 1.99 million was submitted
19 without the input of the plaintiffs' lawyers; correct?

20 **A.** Yes.

21 **Q.** Thank you.

22 MR. MAHADY: I have no further questions, Your
23 Honor.

24 THE COURT: How long are you going to take,
25 Mr. Hester?

1 MR. HESTER: I'm going to take a substantial
2 amount of time.

3 THE COURT: More than 10 minutes?

4 MR. HESTER: More than 10 minutes I'm afraid.

5 THE COURT: Well, I'm going to pull the plug on
6 this now unless there's any objection.

7 MR. MAHADY: Your Honor, I would like to --

8 MS. QUEZON: I think the witness would like to
9 object, Your Honor.

10 MR. MAHADY: Your Honor, I would like to move this
11 proposal into the record.

12 THE COURT: Is there any objection to that?

13 MS. QUEZON: I don't understand the relevance --

14 MR. MAHADY: I think the relevance --

15 MS. QUEZON: -- or the hearsay.

16 MR. ACKERMAN: Or the hearsay.

17 THE COURT: The relevance of the abatement damages
18 or whatever you want to call it.

19 MR. MAHADY: Thank you, Your Honor.

20 MS. QUEZON: It's also hearsay. She did not write
21 that. She was familiar with it, but she didn't write it.

22 MR. MAHADY: Your Honor, the witness has testified
23 that a big part of her division at Marshall, which this
24 comes from, is writing grants. This is a grant written by
25 the division. It's a business record. I think it falls

1 under that exception.

2 MS. QUEZON: There's no foundation for the
3 document. Sorry about that.

4 MR. ACKERMAN: No, we're going to say the same
5 thing. There's no foundation laid for being a business
6 record. It's hearsay from a third party.

7 THE COURT: Well, I'm not going to admit it at
8 this time, Mr. Mahady. I let you question her about it and
9 we'll leave it at that for now.

10 And Ms. -- Dr. O'Connell, I'm going to have to ask you
11 to come back a week from Monday. I believe that's the 7th
12 of June.

13 MS. QUEZON: It is, Your Honor.

14 THE COURT: We'll resume at 9:00 in the morning on
15 June the 7th and I'll see you then. Thank you very much.

16 THE WITNESS: Thank you, Your Honor. Have a good
17 holiday.

18 THE COURT: Thank you.

19 Is there anything we need to do before we adjourn until
20 the 7th of June?

21 Hearing nothing, I'll see everybody a week from Monday
22 morning and I hope everybody comes back well rested and
23 happy and ready to go.

24 MR. ACKERMAN: Oh, sugar. Your Honor, I
25 apologize.

1 Ms. Christenson has deposition designations to formally
2 present to the Court.

3 THE COURT: Okay.

4 MR. CHRISTENSON: Good morning, Your Honor.
5 Monique Christenson representing the City of Huntington.

6 THE COURT: Yes.

7 MR. CHRISTENSON: We have six deposition
8 designations to present today.

9 We have Gary Boggs, Gary Hilliard, Vic Brown, Eric
10 Brantley and -- I forgot my list. Apologies. Steve Reardon
11 and Stephen Lawrence. There we go. Their names are on the
12 boxes.

13 THE COURT: All right.

14 MS. MAINIGI: Your Honor, what we would -- with
15 respect to the Cardinal designations, we would request the
16 opportunity to do what the McKesson team did with the had
17 designations, which is put the objections in a format that
18 will be much more easily reviewable by Your Honor. So we
19 will obviously -- I think we're already -- we've already
20 begun on that process and we will get that expeditiously to
21 you.

22 THE COURT: That would be very helpful to me,
23 Ms. Mainigi.

24 MR. CHRISTENSON: If there are any additional
25 formatting changes requested, we are very willing to hear

1 anything back from Your Honor as to how you might prefer
2 reading those with the transcripts.

3 THE COURT: Thank you.

4 MR. ACKERMAN: I would just note I understand that
5 the defendants believe their format is more easily noted for
6 you. I don't know that we necessarily agree with that. But
7 we're certainly happy to allow the Court to evaluate the two
8 formats and let us know how you want it and we will make
9 sure to do that going forward.

10 THE COURT: Okay.

11 MR. HESTER: Your Honor, may I just ask one more
12 point? I'm sorry. We kept you for a minute and now it's
13 multiplying. We just wanted an instruction that the witness
14 not consult with counsel while she's under cross
15 examination.

16 MS. QUEZON: I know the rules, Your Honor.

17 MR. HESTER: Thank you.

18 THE COURT: The witness as already gone, so I
19 can't instruct her.

20 Is Dr. O'Connell still in the courtroom?

21 MR. FARRELL: This is Paul Farrell. On the way
22 out I told her that she isn't prohibited from talking to
23 Farrells or any other lawyer, but she's not allowed to
24 discuss her testimony or the substance of her testimony
25 between now and when she comes back.

1 THE COURT: Okay. Are you satisfied with that,
2 Mr. Hester?

3 MR. HESTER: Yes, Your Honor. Thank you.

4 THE COURT: All right.

5 (Trial recessed at 11:55 a.m.)
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1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court
3 Reporter, and I, Lisa A. Cook, Official Court Reporter,
4 certify that the foregoing is a correct transcript from
5 the record of proceedings in the matter of The City of
6 Huntington, et al., Plaintiffs vs. AmerisourceBergen
7 Drug Corporation, et al., Defendants, Civil Action No.
8 3:17-cv-01362 and Civil Action No. 3:17-cv-01665, as
9 reported on May 28, 2021.

10
11 S\Ayme A. Cochran

12 Reporter

13 s\Lisa A. Cook

14 Reporter

15 —

16 May 28, 202117 Date
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